THE

JUSTICE of the PEACE,

AND

PARISH OFFICER.

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MVSEVM
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Juſtices of the peace.

JUSTICES of the peace are judges of record, appointed by the king, to be juſtices within certain limits, for the conſervation of the peace, and for the execution of divers things comprehended within their commiſſion, and within divers ſtatutes committed to their charge. *Dalt. c.* 2.

And a record or memorial made by a juſtice of the peace, of things done before him judicially in the execution of his office, ſhall be of ſuch credit, that it ſhall not be gainſaid. One man may affirm a thing, and another man may deny it; but if a *record* once ſay the word, no man ſhall be received to aver or ſpeak againſt it; for if men ſhould be admitted to deny the ſame, there would never be any end of controverſies. And therefore to avoid all contention, while one ſaith one thing and another ſaith another thing, the law repoſeth itſelf wholly and ſolely in the report of the judge. And hereof it cometh, that he cannot make a ſubſtitute or deputy in his office, ſeeing that he may not put over the confidence that is put in him. Great cauſe therefore have the juſtices to take heed that they abuſe not this credit; either to the oppreſſion of the ſubject by making an untrue record, or the defrauding of the king by ſuppreſſing the record that is true and lawful. *Lamb.* 63—66.

Hereof alſo it cometh, that if a juſtice of the peace certify to the king's bench, that any perſon hath broken the peace in his preſence, upon this certificate ſuch perſon ſhall be there fined, without allowing him any traverſe thereto. *Dalt. c.* 70.

And that I may treat intelligibly concerning this office (of which lord *Coke* ſays the whole chriſtian world hath not the like, if it be duly executed, 4 *Inſt.* 170,) I will ſet forth,

I. The office of conſervators of the peace at the common law, before the inſtitution of juſtices of the peace.

II. The commiſſion of the juſtices of the peace, founded on the ſtatute law.

III. Oaths to be taken by juſtices of the peace.

IV. Fees to be taken by juſtices of the peace.

V. Some general directions relating to juſtices of the peace, not falling under any particular title of this book.

VI. Their indemnity and protection by the law, in the right execution of their office; and their puniſhment for the omiſſion of it.

I. The office of conſervators of the peace at the common law, before the inſtitution of juſtices of the peace.

Conſervators by election.

1. Of ancient times ſuch officers or miniſters, as were inſtituted either for preſervation of the peace of the county, or for execution of juſtice, becauſe it concerned all the ſubjects of that county, and they had a great intereſt in the juſt and due exerciſes of their ſeveral places, where by force of the king's writ in every ſeveral county choſen in full or open country by the freeholders of that county: As before the inſtitution of juſtices of the peace, there were conſervators of the peace in every county, whoſe office (according to their names) was to conſerve the king's peace, and to protect the obedient and innocent ſubjects from force and violence. Theſe conſervators, by the ancient common law, were by force of the king's writ choſen by the freeholders in the county court, out of the principal men of the county; after which election ſo made, and returned, then in that caſe the king directed a writ to the party ſo elected, to take upon him and execute the office until the king ſhould order otherwiſe. And thus the coroners ſtill continue to be choſen in full county: As alſo the knights of the ſhire for the parliament. 2 *Inſt.* 558, 559.

Conſervators by office.

2. Beſides theſe conſervators of the peace properly ſo called, there were and are other conſervators of the peace by virtue of certain offices: As for inſtance;

(1) The lord chancellor, and every juſtice of the king's bench, have, as incident to their offices, a general authothority to keep the peace throughout all the realm, and to award proceſs for the ſurety of the peace, and to take recognizance for it. 2 *Haw.* 32.

(2) Alſo, every court of record, as ſuch, hath power to keep the peace within its own precinct. 2 *Haw.* 32.

(3) Alſo, every juſtice of the peace is a conſervator of the peace. *Crom.* 6.

(4) Alſo, every ſheriff is a principal conſervator of the peace, and may without doubt *ex officio* award proceſs of the peace, and take ſurety for it. And it ſeems the better opinion, that the ſecurity ſo taken by him is by the common law looked on as a recognizance, or matter of record, and not as a common obligation. 2 *Haw.* 33.

(5) Alſo, every coroner is another principal conſervator of the peace, and may certainly bind any perſon to the peace, who makes an affray in his preſence. But it ſeems the better opinion, that he has no authority to grant proceſs for the peace; and it ſeems clear, that the ſecurity taken by him for the keeping the peace (except only where it is taken by him as judge of his own court for an affray done in ſuch court) is not to be looked on as a recognizance, but as an obligation. 2 *Haw.* 33.

(6) Alſo, every high and petit conſtable are by the common law, conſervators of the peace. 2 *Haw.* 33.

And it is ſaid, that if a conſtable ſee perſons engaged in an affray, or upon the very point of entring upon it, as where one ſhall threaten to kill, wound, or beat another, he may impriſon the offender of his own authority for a reaſonable time, till the heat ſhall be over, and alſo afterwards detain him till he find ſurety of the peace by obligation. 1 *Haw,* 137.

But it is ſaid, that a conſtable hath no power to arreſt a man for an affray done out of his own view; for it is the proper buſineſs of a conſtable to preſerve the peace, not to puniſh the breach of it; nor doth it follow from his having power to compel thoſe to find ſureties who break the peace in his preſence, that he hath the ſame power over thoſe who break it in his abſence. 1 *Haw.* 137.

3. There were alſo other conſervators of the peace by tenure; who held lands of the king by his ſervice, among others, of being conſervators of the peace within ſuch a diſtrict. 2 *Haw.* 33. Conſervators by tenure.

4. Alſo there were other conſervators of the peace by preſcription; who claimed ſuch power from an immemorial uſage in themſelves and their predeceſſors or anceſtors, or Conſervators by preſcription.

thoſe whoſe eſtate they had in certain lands, which wholly depended upon ſuch uſage, both as to its extent, and the manner in which it was to be exerciſed. 2 *Haw.* 33.

Thus it is ſaid, that a mayor of a corporation may be a conſervator of the peace by preſcription. *Crom.* 6.

It is queſtioned indeed by ſome, whether any ſuch power can be claimed by uſage; yet if the power of holding pleas and even of courts of record, which are of ſo high a nature, and imply a power of keeping the peace within their own precincts, may be claimed by uſage, as it ſeems to be certain that they may; it ſeemeth that the bare authority of keeping the peace in a certain diſtrict may as well be claimed by ſuch uſage. 2 *Haw.* 34.

Power of conſervators.

5. The authority which ſuch conſervators of the peace, whether by election, or tenure, or preſcription, have at common law, is the ſame authority which conſtables of a vill or wapentake have at this day. *Crom.* 6. 2 *Haw.* 34.

Their duty.

6. The general duty of the conſervators of the peace by the common law, is employ their own, and to command the help of others, to arreſt and pacify all ſuch who in their preſence, and within their juriſdiction and limits, by word or deed, ſhall go about to break the peace. *Dalt. c.* 1.

And if a conſervator of the peace, being required to ſee the peace kept, ſhall be negligent therein, he may be indicted and fined. *Dalt. c.* 1.

And if the conſervators of the peace have committed or bound over any offenders, they are then to ſend to, or be preſent at, the next ſeſſions of the peace, or gaol delivery, there to object againſt them. *Dalt. c.* 1.

II. Of the commiſſion of juſtices of the peace.

Juſtices of the peace at this day are of three ſorts; 1. By act of parliament; as the biſhop of *Ely* and his ſucceſſors, and the archbiſhop of *York*, and biſhop of *Durham*, 27 H. 8. c. 24. 2. By charter, or grant made by the king under the great ſeal; as mayors and the chief officers in divers corporate towns. 3. By commiſſion.

At the firſt, by the ſtatute of the 1 *Ed.* 3. which is the firſt ſtatute that ordains the aſſignment of juſtices of the peace by the king's commiſſion, thoſe juſtices had no other power but only to keep the peace. But the very next year, the form of the commiſſion was enlarged, and continued ſtill further to be enlarged both in that king's reign, and in the reign of almoſt every other ſucceeding prince, until the 30th year of the reign of Q. *Elizabeth*, when by the number

number of the ſtatutes particularly given in charge therein to the juſtices, many of which nevertheleſs had been a good while before repealed, and by much vain repetition, and other corruptions that had crept into it, partly by the miſwriting of clerks, and partly by the untoward huddling of things together, it was become ſo cumberſome and foully blemiſhed, that of neceſſity it ought to be redreſſed. Which imperfections being made known to Sir *Chr. Wrey*, then Lord Ch. Juſtice of the king's bench, he communicated the ſame with the other judges and barons, ſo as by a general conference had amongſt them, the commiſſion was carefully refined in the *Michaelmas* term 1590, and being then alſo preſented to the lord chancellor, he accepted thereof, and commanded the ſame to be uſed: Which continues with very little alteration to this day. *Lamb. c.* 9.

Which is as follows:

George *the third, by the grace of* God, *of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth. To* A. B. C. D. &c. *greeting.*

Know ye that we have aſſigned you, jointly and ſeverally and every one of you our juſtices to keep our peace in our county of W. *And to keep and cauſe to be kept all ordinances and ſtatutes for the good of the peace, and for preſervation of the ſame, and for the quiet rule and government of our people made, in all and ſingular their articles in our ſaid county (as well within liberties as without) according to the force, form, and effect of the ſame; And to chaſtiſe and puniſh all perſons that offend againſt the form of thoſe ordinances or ſtatutes, or any one of them, in the aforeſaid county, as it ought to be done according to the form of thoſe ordinances and ſtatutes; And to cauſe to come before you, or any of you, all thoſe who to any one or more of our people concerning their bodies or the firing of their houſes have uſed threats, to find ſufficient ſecurity for the peace, or their good behaviour, towards us and our people; and if they ſhall refuſe to find ſuch ſecurity, then them in our priſons until they ſhall find ſuch ſecurity to cauſe to be ſafely kept.*

We have alſo aſſigned you, and every two or more of you (of whom any one of you the aforeſaid A. B. C. D. &c. *we will ſhall be one) our juſtices to inquire the truth more fully, by the oath of good and lawful men of the aforeſaid county, by whom the truth of the matter ſhall be the better known, of all and all manner of felonies, poiſonings, inchantments, ſorceries, arts magick, treſpaſſes, foreſtallings, regratings, ingroſſings, and extortions whatſoever; and of all and ſingular other crimes and offences, of which the juſtices of our peace may or ought lawfully to inquire, by whomſoever and after what manner ſoever*

in the ſaid county done or perpetrated, or which ſhall happen to be there done or attempted; and alſo of all thoſe who in the aforeſaid county in companies againſt our peace, in diſturbance of our people, with armed force have gone or rode, or hereafter ſhall preſume to go or ride; And alſo of all theſe who have there lain in wait, or hereafter ſhall preſume to lie in wait, to maim or cut or kill our people; And alſo of all victuallers, and all and ſingular other perſons, who in the abuſe of weights or meaſures, or in ſelling victuals, againſt the form of the ordinances and ſtatutes, or any one of them therefore made, for the common benefit of England, *and our people thereof, have offended or attempted, or hereafter ſhall preſume in the ſaid county to offend or attempt; And alſo of all ſheriffs, bailiffs, ſtewards, conſtables, keepers of gaols, and other officers, who in the execution of their offices about the premiſſes, or any of them, have unduly behaved themſelves, or hereafter ſhall preſume to behave themſelves unduly, or have been, or ſhall happen hereafter to be careleſs, remiſs, or negligent in our aforeſaid county; And of all and ſingular articles and circumſtances, and all other things whatſoever, that concern the premiſſes or any of them, by whomſoever, and after what manner ſoever, in our aforeſaid county done or perpetrated, or which hereafter ſhall there happen to be done or attempted in what manner ſoever; And to inſpect all indictments whatſoever ſo before you or any of you taken or to be taken, or before others late our juſtices of the peace in the aforeſaid county made or taken, and not yet determined; and to make and continue proceſſes thereupon, againſt all and ſingular the perſons ſo indicted, or who before you hereafter ſhall happen to be indicted; until they can be taken, ſurrender themſelves, or be outlawed: And to hear and determine all and ſingular the felonies, poiſonings, inchantments, ſorceries, arts magick, treſpaſſes, foreſtallings, regratings, ingroſſings, extortions, unlawful aſſemblies, indictments aforeſaid, and all and ſingular other the premiſſes, according to the laws and ſtatutes of* England, *as in the like caſe it has been accuſtomed, or ought to be done; And the ſame offenders, and every of them for their offences, by fines, ranſoms, amerciaments, forfeitures, and other means as according to the law and cuſtom of* England, *or form of the ordinances and ſtatutes aforeſaid, it has been accuſtomed, or ought to be done, to chaſtiſe and puniſh.*

Provided always, that if a caſe of difficulty, upon the determination of any the premiſſes, before you, or any two or more of you, ſhall happen to ariſe; then let judgment in no wiſe be given thereon, before you, or any two or more of you, unleſs in the preſence of one of our juſtices of the one or other bench, or of one of our juſtices appointed to hold the aſſizes in the aforeſaid county.

And

And therefore we command you and every of you, that to keeping the peace, ordinances, ſtatutes, and all and ſingular other the premiſſes, you diligently apply yourſelves; and that at certain days and places, which you, or any ſuch two or more of you as is aforeſaid ſhall appoint for theſe purpoſes, into the premiſſes ye make inquiries; and all and ſingular the premiſſes hear and determine, and perform and fulfil them in the aforeſaid form, doing therein what to juſtice appertains, according to the law and cuſtom of England: *Saving to us the amerciaments, and other things to us therefrom belonging.*

And we command by the tenor of theſe preſents our ſheriff of W. *that at certain days and places, which you, or any ſuch two or more of you as is aforeſaid, ſhall make known to him, he cauſe to come before you, or ſuch two or more of you as aforeſaid, ſo many and ſuch good and lawful men of his bailiwick (as well within liberties as without) by whom the truth of the matter in the premiſſes ſhall be the better known and inquired into.*

Laſtly, we have aſſigned you the aforeſaid A. B. *keeper of the rolls of our peace in our ſaid county. And therefore you ſhall cauſe to be brought before you and your ſaid fellows, at the days and places aforeſaid, the writs, precepts, proceſſes, and indictments aforeſaid, that they may be inſpected, and by a due courſe determined as is aforeſaid.*

In witneſs whereof we have cauſed theſe our letters to be made patent. Witneſs ourſelf at Weſtminſter, &c.

George *the third*, &c.] This manner of iſſuing the commiſſion in the king's name, ſeems to be founded on the ſtatute of the 27 *H.* 8. *c.* 24. which enacts, that all juſtices of the peace ſhall be made by letters patent under the king's great ſeal, in the name and by authority of the king; but reſerves to all cities and towns corporate which have juſtices the liberties which they have enjoyed in that behalf.

To A. B. C. D. &c. *greeting*] From the perſons here named in the commiſſion, it may be proper to conſider, who may, or may not, be juſtices of the peace.

By the ſtatutes of 13 *R.* 2. *c.* 7. and 2 *H.* 5. *ſt.* 2. *c.* 1. The juſtices ſhall be made within the counties of the moſt *ſufficient* knights, eſquires, and gentlemen of the law:

And by the 18 *G.* 2. *c.* 20. it is enacted as follows: *viz.* No perſon ſhall be capable of being or acting as a juſtice of the peace for any county, who ſhall not have in law or equity, for his own uſe, in poſſeſſion, a freehold, copyhold, or cuſtomary eſtate for life, or for ſome greater eſtate, or an eſtate for ſome long term of years, determinable upon one or more lives, or for a certain term originally created for 21 years or more, in lands, tenements, or hereditaments,

ments, in *England* or *Wales*, of the clear yearly value of 100l, above what will diſcharge all incumbrances affecting the ſame, and all rents and charges payable out of the ſame; or who ſhall not be intitled to the immediate reverſion or remainder of lands leaſed for one, two, or three lives, or for any term of years determinable on the death of one, two, or three lives, upon reſerved rents of the clear yearly value of 300l.

By the 1 *M. ſeſſ.* 2. *c.* 8. No *ſheriff* ſhall exerciſe the office of a juſtice of the peace, during the time that he acts as ſheriff. And the reaſon ſeems to be, becauſe he cannot act at the ſame time both as judge and officer, for ſo he would command himſelf to execute his own precepts. *Dalt. c.* 3.

Alſo if he be made a *coroner*, this by ſome opinions is a diſcharge of his authority of juſtice. *Dalt. c.* 3.

But if he be created a duke, archbiſhop, marquis, earl, viſcount, baron, biſhop, knight, judge, or ſerjeant at law, this taketh not away his authority of a juſtice of the peace. 1 *Ed.* 6. *c.* 7. *Dalt. c.* 3.

Alſo, no *attorney*, ſolicitor, or proctor, ſhall be a juſtice of the peace for any county, during the time he ſhall continue in the practice of that buſineſs. 5 *G.* 2. *c.* 18. *ſ.* 2. But this doth not extend to charter juſtices.

By *Holt* Ch. J. Though a man be a *mayor*, it doth not follow that he is a juſtice of the peace, for that muſt be by a particular grant in the charter. L. *Raym.* 1030. But although he be not a juſtice of the peace by the charter, yet there are many caſes, wherein he hath the ſame power as a juſtice of the peace given unto him by particular ſtatutes; as for inſtance, with regard to the cuſtoms, alehouſes, Lord's day, ſwearing, gaming, weights, ſervants, fuel, leather, orchards, ſoldiers, and divers others.

Know ye that we have aſſigned you] This is founded on the ſtatute of the 1 *Ed.* 3. *c.* 16. *viz.* for the better keeping and maintenance of the peace, the king will, that in every county, good men and lawful, which be no maintainers of evil, or barretors in the country, ſhall be aſſigned to keep the peace.

And from this act we are to date that great alteration in our conſtitution, whereby the election of conſervators of the peace was taken from the people, and tranſlated to the aſſignment of the king. *Lamb.* 20.

And here we may obſerve, that the commiſſion hath two parts; or conſiſteth of two different aſſignments: By this firſt aſſignment, any one or more juſtices have as well all the

the ancient power touching the peace, which the conſervators of the peace had at the common law, as alſo that whole authority which the ſtatutes have ſince added thereto. *Dalt. c.* 5.

Jointly and ſeverally, and every one of you] Whatſoever any one juſtice alone may do, the ſame alſo may lawfully be done by any two or more juſtices; but where the law giveth authority to two, there one alone cannot execute it. *Dalt. c.* 6.

And yet where a ſtatute appointeth a thing to be done by two juſtices or more, if the offence be any miſdemeanor or matter againſt the peace, there upon complaint made of the offence, to any of thoſe juſtices, it ſeemeth that one of them may grant out his warrant to attach the offender, and to bring him before the ſame juſtice and the other juſtice ſo appointed (at ſome convenient place), and then they to hear and determine the ſame. *Dalt. c.* 6.

But it ſeemeth, that when a thing is appointed by any ſtatute to be done by or before one perſon certain, ſuch thing cannot be done by or before any other: and by ſuch expreſs deſignation of one, all others are excluded, and their proceedings therein are *coram non judice.* Dalt. c. 6.

Our juſtices] In that the king calls them *our* juſtices, their authority determines of courſe by his death or demiſe, ſo that he being once dead, or having given over his crown, they are no more his juſtices, and the juſtices of the next prince they cannot be, unleſs it ſhall pleaſe him afterwards ſo to make them. *Dalt. c.* 3.

But by the 1 *Ann. ſt.* 1. *c.* 8. *ſ.* 2. No patent or grant of any office or employment ſhall determine by the king's death or demiſe, but ſhall continue in force for ſix months after, unleſs in the mean time made void by the ſucceſſor.

Alſo, before his death or demiſe, the king may determine the commiſſion at his pleaſure; and that either expreſſed, as by writ under the great ſeal, or by implication, by making a new commiſſion, and leaving out the former juſtices names. But until notice, or publiſhing of the new commiſſion, the acts of the former juſtices are good in law. *Dalt. c.* 3.

But to mayors and chief officers in corporations, which have the authority of juſtices of the peace, or of conſervators of the peace, by grant under the king's letters patent to them and their ſucceſſors, the authority remaineth, notwithſtanding the king's death or demiſe. *Dalt. c.* 3.

Neither can the king diſcharge theſe again at his pleaſure; but yet ſuch grants and charters may for ſome great and

and general defect, or miſcarriage, in the execution of the powers herein granted, be repealed, and the liberties ſeized. *Dalt. c.* 3.

Juſtices to keep our peace] Although they are in no part of the commiſſion called *keepers of the peace*, yet inaſmuch as by the 18 *Ed.* 3. *c.* 2. they are expreſly called *keepers of the peace*, and the principal end of their office is for the keeping of the peace, and their uſual deſcription in certioraries is by the name of *keepers of the peace*; it hath been adjudged, that in the caption of an indictment, *keepers of the peace and juſtices of our lord the king*, is good, without expreſly naming them *juſtices of the peace*. 2 Haw. 38.

To keep our peace] Theſe words ſeem to give them the authority which the conſervators of the peace had at common law: and all that follows in the commiſſion, ſeems an addition to the power of the ancient conſervators.

Our peace] It hath been reſolved, that the deſcription of juſtices of the peace, by the name of *juſtices of our lord the king to keep the peace*, is good, without ſaying, the *peace of our lord the king*; for that is neceſſarily implied. 2 *Haw.* 38.

Alſo, by theſe words *our peace*, when the king dies, the ſurety of the peace is diſcharged; for when he is dead, it is not his peace. *Crom.* 124.

In our county of W.] Here are two conſiderations; One is, that the juſtice cannot act when he is out of the county: And the other is, that when he is in the county, he can act for that county only, and his power extendeth to no other. But both theſe are to be underſtood with ſome limitations.

As to the former caſe, when he is out of the county; It is ſaid, that the juſtices have no *coercive* power when out of the county; and therefore, that an order of baſtardy, or for payment of labourers wages, made by them out of the county is not binding. Yet it is ſaid, that *recognizances* and *informations* voluntarily taken before them in any place, are good. 2 *Haw.* 37.

And L. *Hale* ſays, that a juſtice of the peace may do a miniſterial act out of his county, as examining a party robbed whether he knows the felons; but that he cannot do a compulſory act, as committing a perſon for not giving recognizance. 2 *H. H.* 50, 51.

Alſo, by the 9 *G. c.* 7. A juſtice dwelling in a city or precinct that is a county of itſelf, within the county at large, may act at his own dwelling houſe for ſuch county at large.

And

And as to the latter caſe, wherein it is ſuppoſed that his power is limited unto that county only,—it is enacted by the 24 *G.* 2. *c.* 55. that if any perſon againſt whom a warrant ſhall be iſſued, ſhall eſcape, go into, reſide, or be in any place out of the juriſdiction of the juſtice granting the warrant, any juſtice of the place where ſuch perſon ſhall be, upon proof on oath of the hand writing of the juſtice granting ſuch warrant, ſhall indorſe his name thereon, which ſhall be a ſufficient authority to execute the warrant within ſuch other juriſdiction.

And the juſtice may further order (if he thinks fit) the party, according as he ſhall appear bailable or not bailable upon the face of the warrant, to be brought before himſelf or ſome other juſtice or juſtices of that county, or to be carried back into the county from whence the warrant did iſſue.

And to keep and cauſe to be kept all ordinances and ſtatutes for the good of the peace] It ſeems certain, that by virtue hereof, they may execute all ſtatutes whatſoever, made for the better keeping of the peace, and conſequently thoſe of *Wincheſter* and *Weſtminſter*, and all others concerning the peace, made before the reign of *Ed.* 3. in whoſe time (as hath been ſaid) juſtices of the peace were firſt inſtituted; for all thoſe ſtatutes were expreſly mentioned in the ancient commiſſions of the peace, and have always been undoubtedly taken to be included in theſe general words of the preſent commiſſion. And yet none of the ſtatutes which ordain the office of juſtices of the peace, ſay any thing concerning the execution of the ſaid former ſtatutes; ſo that the power of juſtices of the peace in relation to thoſe ſtatutes ſeems entirely to depend on the king's commiſſion, and yet hath always been unqueſtionably allowed. From whence it appears, that regularly the king, by his commiſſion, may authorize whom he pleaſes to execute an act of parliament. 2 *Haw.* 37.

But if no power be expreſly given in any ſuch ſtatute to any one juſtice alone, he cannot proceed upon it, but he may prefer the cauſe at the ſeſſions, and work it to a preſentment upon the ſtatute. *Dalt. c.* 5.

But beſides the ſtatutes relating to the peace, there are alſo many other ſtatutes which are not ſpecified in the commiſſion, and yet are committed to the charge and care of the juſtices of the peace, by the expreſs words of ſuch ſtatutes; and all ſuch ſtatutes are to them a ſufficient warrant and commiſſion of themſelves, altho' they be not recited in the commiſſion, and are to be executed by them, according as the ſame ſtatutes themſelves do ſeverally preſcribe and ſet down. *Dalt. c.* 5.

Statutes

Statutes for the good of the peace] Although a præmunire is not within the letter of the commiſſion, yet inaſmuch as it is againſt the peace of the king and of the realm, any juſtice may cauſe a perſon to be apprehended for ſuch offence, and take his examination, and informations againſt him, and certify the ſame to the king's bench or gaol delivery. 2 *Haw.* 39. And the ſame may be ſaid of other like offences.

And for the quiet government of our people] Of *our* people;—yet it ſeemeth, that the ſubjects of a foreign prince coming into *England*, and living under the protection of our king, ſhall be ſubject to and have the benefit of the laws, in reſpect of the local allegiance which they owe to him. 2 *Haw.* 35. 1 *H. H.* 93, 94.

As well within liberties as without] By theſe words ſhall be intended ſuch liberties and franchiſes which have return of writs, and not ſuch as are counties of themſelves, as *London*, *Norwich*, *York*, and ſuch like. *Crom.* 8.

But yet from hence it ſeems clearly to follow, that they may execute their office within a town (not being a county of itſelf) altho' it have a ſpecial commiſſion of the peace for its own limits, unleſs ſuch commiſſion have a clauſe, that no other juſtices except thoſe named in it, ſhall any way concern themſelves in the keeping of the peace within the liberties of ſuch town: And it may be queſtioned, whether ſuch a ſpecial clauſe in ſuch a commiſſion do abſolutely make void the act of any county juſtice within ſuch town; ſince the commiſſion for the county ſeems as fully to give thoſe named in it a juriſdiction over all ſuch towns within the precincts of it, as ſuch commiſſion for a town doth exclude them. And the juſtices for the county ſeem to be under no neceſſity of informing themſelves of the contents of a commiſſion, which they have nothing to do with. Yet if they have expreſs notice given them of ſuch a reſtraining clauſe, and proceed to act within ſuch town in defiance of it, they may perhaps be puniſhable for their contempt of the king's prohibition; and yet perhaps it may be queſtioned whether their acts be void, for the reaſons above mentioned. 2 *Haw.* 37.

And lord *Hale* treating on the ſame ſubject, ſays, if the king by charter grant to a corporation, that the mayor, and recorder, or other, ſhall be juſtices within the ſame, yet if there be no words of excluſion, the juſtices of the county have a concurrent juriſdiction: But if this franchiſe of being juſtices be granted, *ſo that the juſtices of the county ſhall not intermeddle (ſee non intromittant)*; then tho'

a

a ſubſequent commiſſion be granted in the county at large, it ſeems they have no juriſdiction in this corporation or town; yet it is queſtionable, whether an indictment in the franchiſe be void, or only a contempt in the juſtices. 2 *H. H.* 47.

But in the caſe of *Talbot* and *Hubble*, *T.* 14 *G.* 2. The queſtion was, whether as the city of *New Sarum* had an excluſive commiſſion of the peace, the juſtices of the county of *Wilts* could by virtue of the 12 *C.* 2. *c.* 23. & 15 *C.* 2. *c.* 2. act in exciſe matters within the city. This caſe was argued three times at the bar, and this term *Lee* Ch. J. delivered the reſolution of the court: 1. That the crown might grant to any city, to have juſtices of their own within themſelves, and exclude the county juſtices from intermeddling in the ordinary buſineſs of a juſtice of the peace. 2. That in ſuch caſe, the act of the county juſtices would be void, and not to be conſidered only as a breach of the franchiſe. 3. That tho' the 12 *C.* 2. gives the juriſdiction in exciſe matters to the juſtices of the peace reſiding near the place where the forfeiture ſhall be made, or offence committed; yet it never was the deſign of the legiſlature, to make any alteration in the reſpective juriſdictions of the juſtices, but only to veſt the exciſe juriſdiction of juſtices of counties, cities, and places, with reſpect to their ſeveral local juriſdictions within ſuch places. *Str.* 1154.

Concerning their bodies] *Lambard* and *Dalton* both think it ſeems clear, that if a man is in fear that another will hurt his *ſervants*, or cattle, or other *goods*, the ſurety of the peace ſhall not be granted; but Mr. *Dalton* is of opinion, that if one threatens to hurt a man's *wife*, or *child*, he may crave the peace by virtue of theſe words. *Lamb.* 82. *Dalt. c.* 116.

Have uſed threats] It ſhould ſeem from the many cauſes which from time to time have been adjudged ſufficient to bind to the good behaviour, that this expreſſion is not to be underſtood of *words* only, but of threatning *actions* likewiſe, or any thing whereby a man has juſt cauſe to apprehend the burning of his houſes, or ſome bodily hurt to be done to him.

To find ſufficient ſecurity] This is done by recognizance; by a reaſonable intendment of law, more than by any eſpecial law in that caſe provided. *Crom.* 125.

For the peace or their good behaviour] Lord *Hale* ſpeaking of the ſtatute of the 34 *Ed.* 3. *c.* 1. (on which Mr

Crompton ſays the power of juſtices to bind to the good behaviour is grounded) ſays, that this power of binding, tho' expreſſed generally, and without any time limited, yet is not intended to be perpetual, but in nature of bail, *viz.* to appear at ſuch a day at their ſeſſions, and in the mean time to be of good behaviour. 2 *H. H.* 136.

In our priſon] The king's priſon is the common gaol of the county: But by the ſtatute of the 6 *G. c.* 19. the juſtices may commit vagrants and other criminals, and perſons charged with ſmall offences, either to the gaol, or to the houſe of correction, by their diſcretion, for ſuch offences, or for want of ſureties.

We have alſo aſſigned you and every two or more of you] here beginneth the ſecond part of the commiſſion, or the ſecond aſſignment: All the buſineſs within which aſſignment belongeth to the ſeſſions of the peace. *Dalt. c.* 5.

And by this it appeareth, that two juſtices may hold a ſeſſions, but that one juſtice cannot. *Crom.* 6, 7.

Of whom any one of you the aforeſaid A. B. C. D. &c. *we will ſhall be one*] This clauſe which gives power to two or more juſtices to hear and determine offences, requires that at leaſt one of thoſe juſtices be of that ſelect number, which is commonly termed of the *Quorum* (from that word in the *Latin* commiſſions, *Quorum—unum eſſe volumus*) For thoſe of the *quorum* were wont to be choſen ſpecially for their knowledge in the laws: and this was it which led the makers of ſeveral ancient ſtatutes expreſly to enact, that ſome learned in the laws ſhould be put into the commiſſion of the peace; and (to ſay the truth) all ſtatutes that require the preſence of the *quorum*, do tacitly ſignify ſuch a learned man. For albeit that a diſcreet perſon (not converſant in the ſtudy of the laws) may ſufficiently follow ſundry particular directions concerning the ſervice of the peace; yet when the proceedings muſt be by way of preſentment or indictment, upon the evidence of witneſſes, and oaths of jurors, and by the order of hearing and determining, according to the ſtreight rule and courſe of the law, it muſt be confeſſed that learning in the laws is very neceſſary. *Lamb.* 48, 49.

But learning being now greatly advanced and improved ſince the firſt inſtitution of this office, this diſtinction is not of much uſe, but all or moſt of the juſtices are now equally aſſigned to be of the *quorum*; and by the ſtatute of 26 *G.* 2. *c.* 27. no act, order, adjudication, warrant, indenture

denture of apprenticeſhip, or other inſtrument done or executed by two or more juſtices, which doth not expreſs that one or more of them is of the *quorum*, (altho' the ſtatutes reſpectively require that one of the juſtices ſhall be of the *quorum*) ſhall be impeached, ſet aſide, or vacated, for that defect only.

And by the 7 *G.* 3. *c.* 21. In cities, boroughs, towns corporate, franchiſes, and liberties, which have only one juſtice of the *quorum*; all acts, orders, adjudications, warrants indentures of apprenticeſhip, or other inſtruments, done or executed by two or more juſtices qualified to act therein, ſhall be valid, altho' neither of the ſaid juſtices ſhall be of the *quorum*.

By the oath of good and lawful men] That is, by a jury ſworn.

Of all and all manner of felonies] That is, either by the common law, or by ſtatute. *Crom.* 8.

Felonies] Tho' the commiſſion doth not mention *murders* and *manſlaughters*, by expreſs name, but only felonies generally, yet by theſe general words, they have power to hear and determine murder and manſlaughter, and alſo may take an indictment of *ſe defendendo*, contrary to the opinions of *Fitzherbert* and *Stamford*. But tho' the juſtice have this power, yet they do not ordinarily proceed to hear and determine theſe offences, and rarely other offences without clergy, both becauſe of the monition and clauſe in their commiſſion, in caſe of difficulty to expect the preſence of the juſtices of aſſize; and alſo becauſe of the direction of the ſtatute of the 1 & 2 *P.* & *M.* *c.* 13. which directs juſtices of the peace, in caſe of manſlaughter and other felonies, to take the examination of the priſoner, and the information of the fact, and put the ſame in writing; and then to bail the priſoner, if there be cauſe, and to certify the ſame with the bail at the next gaol delivery: And therefore in caſes of great moment, they bind over the proſecutors, and bail the party if bailable, to the next gaol delivery; but in ſmaller matters, as petit larceny, and ſome caſes within clergy, they bind over to the ſeſſions: But this is only in point of diſcretion and convenience, not becauſe they have not juriſdiction of the crime. 2 *H.* *H.* 46.

So alſo, an inquiſition of *ſelf-murder*, if the body cannot be ſeen, and ſo not inquired of by the coroner, may be taken before juſtices of the peace; for it is a felony, and within the extent of their commiſſion. 1 *H.* *H.* 414.

So alſo, if a perſon hath committed *treaſon*, tho' the juſtices have no cognizance of it as treaſon, yet they have cognizance

cognizance of it as a felony, and as a breach of the peace; and therefore a juſtice of the peace, upon information on oath, may iſſue his warrant to take the traytor, and may take his examination, and commit him to priſon. 1 *H. H.* 580.

Poiſonings] The word in the Latin commiſſions was *veneficia*; and before the ſtatute of the 9 *G.* 2. *c.* 5. which aboliſheth witchcraft, was in the *Engliſh* tranſlations rendered witchcrafts.

Inchantments, ſorceries, arts magic] Theſe alſo are aboliſhed by the ſaid ſtatute, which enacts, that no proſecution ſhall thereafter be commenced againſt any perſon, for witchcraft, ſorcery, inchantment, or conjuration.

And from the words continuing in the commiſſion, when the crime itſelf is aboliſhed, we may obſerve the averſeneſs in the ſuperior courts from altering ancient forms.

Treſpaſſes] This is founded on the ſtatute of the 34 *Ed.* 3. *c.* 1. which enacts, that the juſtices aſſigned ſhall have power to reſtrain the offenders, rioters, and all other barators, and to chaſtiſe them according to their treſpaſs or offence.

And upon this Mr. *Hawkins* obſerves, that the word *treſpaſs* is of a very general extent, and in a large ſenſe not only comprehends all inferior offences, which are properly and directly againſt the peace, as aſſaults and batteries, and ſuch like, but alſo all others which are ſo only by conſtruction; as all breaches of the law in general are ſaid to be. Yet it hath been of late ſettled, that juſtices of the peace have no juriſdiction over forgery or perjury at the common law; the principal reaſon of which reſolution, he ſays, as he apprehended was, that inaſmuch as the chief end of the inſtitution of the office of theſe juſtices was, for the preſervation of the peace againſt perſonal wrongs, and open violence; and the word treſpaſs in its moſt proper and natural ſenſe, is taken for ſuch kind of injuries, it ſhall be underſtood in that ſenſe only in the ſaid ſtatute and commiſſion, or at the moſt to extend to ſuch other offences only as have a direct and immediate tendency to cauſe ſuch breaches of the peace, as libels, and ſuch like, which on this account have been adjudged indictable before juſtices of the peace. 2 *Haw.* 40.

The words for treſpaſſes in the old Latin commiſſions, is *tranſgreſſiones.*

Fore-

Foreſtallings, regratings, ingroſſings] Over theſe offences the juſtices in ſeſſions had juriſdiction given to them, by the ſtatute of the 5 & 6 *Ed.* 6. *c.* 14. which is now repealed; but the ſame ſtill continue offences puniſhable by indictment at the common law.

Extortions] The intent of this word is, to inquire of thoſe who have done exceſſive wrongs; for wrong done by any one is properly treſpaſs, but exceſſive wrong done by any one is called extortion; and this is more properly in officers, as ſheriffs, mayors, bailiffs, eſcheators, and other officers whatſoever (as well ſpiritual as temporal) who by colour of their office have done great oppreſſion and exceſſive wrong to the king's ſubjects, in taking exceſſive rewards or fees for doing their offices. *Crom.* 8.

The juſtices have no expreſs power given them over this offence by any ſtatute; upon which Mr. *Hawkins* obſerves, that juſtices of the peace have juriſdiction of all inferior crimes within their commiſſion, whether ſuch crimes be mentioned in any ſtatute concerning them or not; for that all ſuch crimes are either directly or at leaſt by conſequence and judgment of law, againſt the peace: And, upon this ground principally, he ſays, as he apprehended, it was lately reſolved, that they may take an indictment of *extortion*. 2 Haw. 40.

And of all and ſingular other crimes and offences of which the juſtices of our peace may or ought lawfully to inquire] Which general words ſeem to include the vaſt number of offences over which they have a juriſdiction given them by many ſtatutes, and which are not particularly mentioned in the commiſſion.

And alſo of all thoſe who in companies againſt our peace in diſturbance of our people with armed force have gone or rode] By theſe words they are to inquire of riots, routs, and all unlawful aſſemblies. *Crom.* 8.

Weights or meaſures] This clauſe was firſt eſtabliſhed by the 34 *Ed.* 3. *c.* 5. And they have further power given herein by ſeveral ſubſequent ſtatutes, all which ſtatutes muſt be ſtrictly purſued in relation to the ſeveral offences.

Selling victuals] Over this they have a juriſdiction given them, by the 2 & 3 *Ed.* 6. *c.* 15. intituled, *The bill of conſpiracies of victuallers and craftſmen.*

And alſo of all ſheriffs, bailiffs, ſtewards, conſtables, keepers of gaols, and other officers, who in the execution of their offices have unduly behaved themſelves] This clauſe is as ancient as the 4 *Ed.* 3. *c.* 2. on which it is founded.

And it hath been ſuffered to remain in the commiſſion, not as of any neceſſity at all (ſince it is incident to every court of record to do correction upon whatſoever officers and miniſters do ſerve them), but only for the plainer declaration of the power of theſe juſtices in that behalf, and for the more aſſured terrifying of ſuch as ſhall either of contempt or negligence, do that which is amiſs. *Lamb.* 49.

And to inſpect all indictments ſo before you taken] But they cannot proceed upon indictments taken before coroners, or juſtices of oyer and terminer or gaol delivery; but on indictments taken before the ſheriff in his turn they may proceed. *Hales Pl.* 168.

Or before other late our juſtices] This is founded on the ſtatute 11 *H.* 6. *c.* 6. which enacts, that no indictment, plea, ſuit or proceſs ſhall be diſcontinued by a new commiſſion; but the juſtices in the new commiſſion, after they ſhall have the records of the ſame pleas and proceſſes before them, ſhall have power to continue the ſaid pleas and proceſſes, and to hear and finally to determine the ſame, as the former juſtices might have done.

And to make and continue proceſſes] This is by *venire*, *diſtringas*, *capias*, or *exigent*, as the caſe ſhall be. And it differs from a warrant, in that a warrant is only to attach and convene the party before indictment, and may be either in the name of the king or of the juſtice; but the proceſs iſſues after indictment, and muſt be in the name of the king only. *Dalt. c.* 193.

Until they can be taken, ſurrender themſelves, or be outlawed] For the proceſs is ſent out to this end, that either the party ſhall come in, to anſwer and to be juſtified by the law; or elſe that he ſhall for his contumacy be deprived of the benefit of the law. *Lamb.* 521.

Or be outlawed] It is obſervable that the power of the juſtices ſtops here, and goes no further; ſo that they cannot make out a *capias utlagatum*, but the outlawry muſt be certified into the king's bench. *Lamb.* 521. 2 *H. H.* 52.

But by the 12 *Co.* 103. they that have power to award proceſs of outlawry, have alſo a power to award a *capias utlagatum*, as incident to their authority and juriſdiction.

Hear and determine] This power was firſt given to them by the ſtatute of the 18 *Ed.* 3. *ſt.* 2. *c.* 2. and afterwards confirmed and enlarged by divers other ſtatutes.

Yet this clauſe doth not in propriety make the juſtices of the peace juſtices of oyer and terminer, becauſe that is

a diſtinct commiſſion; and therefore a ſtatute limiting an offence to be heard and determined before juſtices of oyer and terminer, gives not the power therein to juſtices of the peace. *Hale's Pl.* 165.

And thereupon it is ſaid, that although they have power to hear and determine felonies, yet they cannot deliver a perſon ſuſpected thereof by proclamation (as juſtices of gaol delivery may) until an inquiſition taken; but if an inquiſition be taken, and an *ignoramus* found, they may deliver him as it ſeemeth. 2 *H. H.* 46, 47.

Likewiſe, although commiſſioners of oyer and terminer may indict and try at the ſame ſeſſions, yet it hath been ruled otherwiſe in caſe of juſtices of the peace, unleſs by conſent; but certainly conſtant uſage and learned opinion muſt give that expoſition upon thoſe reſolutions, that it muſt extend only to popular actions or indictments for miſdemeanors, and not in caſes of felony. 2 *H. H.* 48.

By fines, ranſoms, amerciaments, forfeitures, and other means—to chaſtiſe and puniſh] Hereby the juſtices are now armed with far more ample authority and power, than the ancient conſervators of the peace were; for they had no power to convene the offender before them, nor to examine, hear, or determine the cauſe, nor to puniſh except in ſome few caſes as mentioned before. *Dalt. c.* 6.

But the juſtices may not award any recompence to the party wronged, otherwiſe than by perſuaſion. *Dalt. c.* 5.

Nevertheleſs, theſe words are inſerted, not as of neceſſity (for the puniſhment of all offenders is implied in the word *determine*), but for the plainer declaration of the juſtices power, and for the more aſſured terrifying of offenders. *Lamb.* 49.

If a caſe of difficulty ſhall happen to ariſe] That is a difficulty in point of law. *Crom.* 6.

Then let judgment in nowiſe be given] But yet if they liſt to proceed without the judge's advice, their judgment is not void; but it ſtandeth good and effectual, until it be reverſed by a ſuperior court *Lamb.* 50.

At certain days and places] That is, when they hold their ſeſſions, which they are empowered and required to do by ſeveral ſtatutes.

Laſtly, we have aſſigned you the aforeſaid A. B. *keeper of the rolls*] This is in purſuance of the ſtatute of the 37 *H.* 8. *c.* 1. which enacts, that the lord chancellor ſhall by commiſſion aſſign ſuch perſon to be *cuſtos rotulorum* as the king ſhall by writing under his hand appoint.

III. Oaths to be taken by juſtices of the peace.

Oath of office.

1. On renewing the commiſſion of the peace (which generally happeneth as any perſon is newly brought into the ſame) there cometh a writ of *dedimus poteſtatem* directed out of chancery, to ſome ancient juſtice (or other) to take the oath of him which is newly inſerted, which is uſually in a ſchedule annexed; and to certify the ſame into that court, at ſuch a day as the writ commandeth. Unto which oath are uſually annexed the oaths of allegiance and ſupremacy. *Lamb.* 53.

The form of which oath of office at this day is as followeth:

Ye ſhall ſwear, that as juſtice of the peace in the county of W. *in all articles in the king's commiſſion to you directed, you ſhall do equal right to the poor and to the rich, after your cunning, wit, and power, and after the laws and cuſtoms of the realm, and ſtatutes thereof made: And ye ſhall not be of counſel of any quarrel hanging before you: And that ye hold your ſeſſions after the form of the ſtatutes thereof made: And the iſſues, fines, and amerciaments that ſhall happen to be made, and all forfeitures which ſhall fall before you, ye ſhall cauſe to be entred without any concealment (or embezilling) and truly ſend them to the king's exchequer. Ye ſhall not let, for gift or other cauſe, but well and truly ye ſhall do your office of juſtice of the peace in that behalf: And that you take nothing for your office of juſtice of the peace to be done, but of the king, and fees accuſtomed, and coſts limited by ſtatute. And ye ſhall not direct, nor cauſe to be directed, any warrant (by you to be made) to the parties, but ye ſhall direct them to the bailiff of the ſaid county, or other the king's officers or miniſters, or other indifferent perſons, to do execution thereof. So help you God.*

This oath ſeems to be founded on the ſtatute of the 13 *R.* 2. *c.* 7. which enacts, that the juſtices ſhall be ſworn duly and without favour, to keep and put in execution all the ſtatutes and ordinances touching their offices.

And ſuch as have once taken the oaths under a writ of *dedimus poteſtatem*, ſhall not be obliged, upon the iſſuing of a new commiſſion, to ſue out or have any other *dedimus poteſtatem*, from the clerk of the crown; but the clerk of the peace or his deputy, ſhall on every new commiſſion being iſſued, prepare a parchment roll, with the oaths annexed to and uſually taken under the ſaid writ of *dedimus poteſtatem* ingroſſed on ſuch roll, and ſhall adminiſter without fee to ſuch juſtices the oaths in ſuch roll

roll ſpecified; which juſtices having taken the ſaid oaths ſhall ſubſcribe their names on the ſaid parchment roll: and the ſaid roll ſhall be kept amongſt the records of the ſeſſions. 1 *G.* 3. *c.* 13. *ſ.* 2.

But by the 7 *G.* 3. *c.* 9. Such perſons as have been or ſhall be appointed juſtices by any commiſſion granted by his preſent majeſty, and have taken and ſubſcribed or ſhall take and ſubſcribe the oaths mentioned in the ſaid act of 1 *G.* 3. and ſuch perſons as ſhall be appointed juſtices by any commiſſion which ſhall be granted after his majeſty's demiſe by any of his ſucceſſors, and ſhall have, after iſſuing the firſt commiſſion whereby ſuch perſons ſhall be appointed juſtices in the reign of any ſucceeding king, taken and ſubſcribed the ſaid oaths,—ſhall not be obliged, during the reign of his preſent majeſty, or during any future reign in which ſuch oaths ſhall have been ſo taken and ſubſcribed as aforeſaid, to take and ſubſcribe the ſame oaths by reaſon of ſuch perſons being again appointed juſtices by any ſubſequent commiſſion which ſhall be granted during any ſuch reign. [That is, they ſhall not be obliged to take and ſubſcribe the ſaid oaths more than once in one king's reign].

Oath of qualification.

2. By the 18 *G.* 2. *c.* 20. No perſon ſhall be capable of acting as a juſtice of the peace, who ſhall not before he acts, at the ſeſſions of the county where he intends to act, take and ſubſcribe the oath following: *I* A. B. *do ſwear, that I truly and* bona fide *have ſuch an eſtate, in law or equity, to and for my own uſe and benefit, conſiſting of*——(ſpecifying the nature of ſuch eſtate, whether meſſuage, land, rent, tithe, office, benefice, or what elſe) *as doth qualify me to act as a juſtice of the peace for the county, riding, or diviſion of*——*according to the true intent and meaning of an act of parliament made in the* 18*th year of the reign of his majeſty king* George *the ſecond, intitled, An act to amend and render more effectual an act paſſed in the fifth year of his preſent majeſty's reign, intitled, An act for the further qualification of juſtices of the peace; and that the ſame* (except where it conſiſts of an office, benefice, or eccleſiaſtical preferment, which it ſhall be ſufficient to aſcertain by their known and uſual names) *is lying or being, or iſſuing out of lands, tenements, or hereditaments, being within the pariſh, townſhip, or precincts of*——*or in the ſeveral pariſhes, townſhips, or precincts of*——*in the county of*——*or in the ſeveral counties of*——(as the caſe may be).

Which oath taken and ſubſcribed, ſhall be kept by the clerk of the peace among the records of the ſeſſions.

And the clerk of the peace ſhall on demand forthwith deliver an atteſted copy to any perſon, paying 2 s.

for the ſame; which being proved to be a true copy of ſuch oath, ſhall be admitted in evidence on any iſſue in an action brought on this act.

And if any perſon ſhall act as juſtice, without having taken and ſubſcribed the ſaid oath, or without being qualified as above, he ſhall for every offence forfeit 100l; half to the poor of the pariſh in which he moſt uſually reſides, and half to him who ſhall ſue, with full coſts. The proſecution to be in ſix months.

And in ſuch action, the proof the qualification ſhall lie on the perſon againſt whom it is brought.

And if the defendant intends to inſiſt on any lands not contained in ſuch oath, he ſhall, at or before the time of pleading, deliver to the plaintiff or his attorney a notice in writing, ſpecifying ſuch lands, and the pariſh and county where they are ſituate (offices and benefices excepted, which it ſhall be ſufficient to aſcertain by their uſual names): And if the plaintiff in ſuch ſuit ſhall think fit thereon not to proceed further, he may with leave of the court diſcontinue ſuch ſuit, on payment of coſts to the defendant as the court ſhall award.

And upon trial no eſtate, but what is contained in the oath and notice, ſhall be admitted as any part of the qualification.

Provided, that where the qualification or any part thereof conſiſts of rent, it ſhall be ſufficient to ſpecify in ſuch oath or notice, ſo much of the lands, out of which ſuch rent is iſſuing, as ſhall be of ſufficient value to anſwer ſuch rent.

And if the plaintiff or informer ſhall diſcontinue (otherwiſe than as aforeſaid) or be non-ſuit, or judgment be given againſt him, he ſhall pay treble coſts.

But this act ſhall not extend to any city, town, or liberty, having juſtices of their own; nor to any peer, lord of the privy council, judge, attorney or ſolicitor general, or to the juſtices of the great ſeſſions for *Cheſhire* and *Wales*, or to the eldeſt ſon or heir apparent of a peer, or of any perſon qualified to ſerve as a knight of a ſhire.

Nor to the officers of the board of green cloth, or principal officers of the navy, or the two under-ſecretaries in each of the offices of the principal ſecretary of ſtate, or the ſecretary of *Chelſea* college, in their reſpective liberties; nor to the heads of colleges or halls, or vicechancellor of either of the univerſities, or to the mayor of *Oxford* or *Cambridge*.

And by 1 *G.* 3. *c.* 13. and 7 *G.* 3. *c.* 9. All perſons who were juſtices at the demiſe of his late majeſty, or

who

who have been or ſhall be appointed juſtices by any commiſſion granted or to be granted by his preſent majeſty or any of his ſucceſſors, and have taken and ſubſcribed, or ſhall after the iſſuing of the firſt commiſſion whereby they ſhall be appointed juſtices have taken and ſubſcribed the oath of office before the clerk of the peace or his deputy as aforeſaid, and alſo this oath, ſhall not be obliged during the reign of his preſent majeſty, or during any future reign in which ſuch oaths ſhall have been ſo taken and ſubſcribed, to take and ſubſcribe the ſame again. And generally there is an indemnifying clauſe in ſome act in almoſt every ſeſſion of parliament, provided they qualify as aforeſaid according to the 18 *G.* 2. *c.* 20. within a time in ſuch act limited.

3. Alſo he ſhall within ſix months take the oaths of allegiance, ſupremacy, and abjuration, and make and ſubſcribe the declaration againſt tranſubſtantiation, in one of the courts at *Weſtminſter*, or at the general or quarter ſeſſions of the place where he ſhall be or reſide, as other perſons qualifying for offices.

Oaths of allegiance, ſupremacy, and abjuration.

IV. Fees to be taken by juſtices of the peace.

In the oath of office abovementioned are theſe words; *And that you take nothing for your office of juſtice of the peace to be done, but of the king, and fees accuſtomed, and coſts limited by ſtatute.*

And by ſtatute their fees in many caſes are limited and aſcertained; as is noted under their reſpective titles where they fall in throughout this book.

And for the reſt, it is provided generally by the ſtatute of the 26 *G.* 2. *c.* 14. That the juſtices at *Midſummer* ſeſſions 1753, ſhall ſettle a table of their clerks fees; which being approved by the juſtices at the next ſucceeding ſeſſions, with ſuch alterations as the juſtices there ſhall think proper, ſhall be laid before the judges at the next aſſizes, who ſhall confirm the ſame with ſuch alterations, additions, or abatements, as to them ſhall appear juſt and reaſonable: And the ſeſſions from time to time may make any other table of fees, and after the ſame ſhall have been approved by the next ſucceeding ſeſſions, ſhall lay the ſame before the judges at the next aſſizes, who may ratify the ſame in like manner: and no table of fees ſhall be valid, until confirmed by the judges. *ſ.* 1.

And if after three months from the time that ſuch table ſhall be confirmed, any juſtice's clerk ſhall demand or take any other or greater fee then ſhall have been ſo con-

firmed, he ſhall forfeit 20l, to him who ſhall ſue in three months. *ſ.* 2, 4.

And the ſaid table of fees ſhall be depoſited with the clerk of the peace, who ſhall cauſe true copies thereof to be kept conſtantly in a conſpicuous part of the room where the ſeſſions are held, on pain of 10*l*. *ſ.* 3.

And by the 27 *G.* 2. *c.* 16. In *Middleſex*, the like table ſhall be confirmed, by the two lords chief juſtices, and the lord chief baron or any two of them. *ſ.* 4.

V. Some general directions relating to juſtices of the peace, not falling under any particular title of this book.

Juſtice being a party.

1. Regularly, juſtices of the peace ought not to execute their office, in their own caſe; but cauſe the offenders to be convened or carried before ſome other juſtice, or deſire the aid of ſome other juſtice being preſent. *Dalt. c.* 173.

By *Holt* Ch. J. *M.* 10 *W.* The mayor of *Hereford* was laid by the heels, for ſitting in judgment in a cauſe where he himſelf was leſſor of the plaintiff in ejectment, though he by the charter was ſole judge of the court. 1 *Salk.* 396.

H. 3 *An.* The caſe of *Foxham* tithing in the county of *Wilts*. A juſtice of the peace was ſurveyor of the highways, and a matter which concerned his office coming in queſtion at the ſeſſions, he joined in making the order, and his name was put in the caption. By by *Holt*, Ch. J. It ought not to be; as if an action be brought by my lord chief juſtice *Trevor* in the court of common pleas, it muſt be before *Edward Nevill*, knight, and his aſſociates, and not before *Thomas Trevor*, &c. And it was quaſhed. 2 *Salk.* 607.

M. 16 *G.* 2. *Great Chart* and *Kennington*. An order of removal of a poor perſon from *Great Chart* to *Kennington* was quaſhed, becauſe one of the juſtices who made the order was an inhabitant of *Great Chart* at the time, and charged to the poor rate there. And by the court, no rule of law or reaſon is more eſtabliſhed, than that a judge ought to ſtand diſintereſted. *Burrow's Settlm. Caſ.* 194.

Yet in ſome caſes, if the juſtice ſhall act in his own cauſe, it ſeemeth to be juſtifiable; as when a juſtice ſhall be aſſaulted, or (in the doing his office eſpecially) ſhall be abuſed to his face, and no other juſtice preſent with him; then it ſeems he may commit ſuch offender until he ſhall

ſhall find ſureties for the peace or good behaviour, as the caſe ſhall require: But if any other juſtice be preſent, it were fitting to deſire his aid. *Dalt. c.* 173. *Str.* 420, 421.

And by the 16 *G.* 2. *c.* 18. (which ſeems to have been made in conſequence of the determination in the caſe of *Great Chart* and *Kennington* aforeſaid) the juſtices may do all things appertaining to their office, ſo far as the ſame relates to the laws for the relief, maintenance, and ſettlement of the poor; for paſſing and puniſh vagrants; for repair of the highways; or to any other laws concerning parochial taxes, levies, or rates; notwithſtanding that they are rated, or chargeable with the rates within any place affected by ſuch their acts. Provided that this ſhall not empower any juſtice for any county at large, to act in the determination of any appeal to the quarter-ſeſſions of ſuch county, from any order, matter, or thing, relating to any ſuch pariſh, townſhip, or place, where ſuch juſtice is ſo charged or chargeable.

And as it is unjuſt in many caſes for the magiſtrate to act in his own cauſe, ſo it is alſo imprudent: To which purpoſe the advice of lord *Coke* is applicable, who upon the occaſion of mentioning a certain judge, who made a ſettlement of his eſtate which was void in law, and brought an action in his own name, which all the other judges, of his own ſhewing in the count, were of opinion did not lie, makes this obſervation, that it is not ſafe for any man (be he never ſo learned) to be of counſel with himſelf in his own cauſe, but to take advice of other great and learned men; and the reaſon he gives is, for that men are generally more fooliſh in their own concerns, than in thoſe of other people. 1 *Inſt.* 377.

2. If a juſtice exceed his authority, in granting a warrant, yet the officer muſt execute it, and is indemnified for ſo doing; but if it be a caſe wherein he hath no juriſdiction, or in a matter whereof he hath no cognizance, the officer ought not to execute ſuch warrant; ſo that the officer is bound to take notice of the authority and juriſdiction of the juſtice, *Cro. Car.* 394. 10 *Co.* 76. Acting without authority.

Thus if a juſtice ſend a warrant to a conſtable to take up one for ſlander, or the like, the juſtice hath no juriſdiction in ſuch caſes, and the conſtable ought to refuſe the execution of it. *Wood. b.* 1. *c.* 7.

But by the 24 *G.* 2. *c.* 44. If the officer in ſix days after demand ſhall grant to the party complaining a peruſal and copy of the warrant, he ſhall not be liable to any action, but the juſtice only,

Whether they may ſuperſede their own proceedings.

3. *T.* 2 *G. Pancras* and *Rumbald.* There was an order of two juſtices for the removal of a poor perſon, from the pariſh of *Pancras* to *Rumbald.* Within three days, the juſtices reciting that they were ſurprized, ſuperſeded it; and commanded the church-wardens to return the former order to be cancelled. It was inſiſted, that the juſtices could not iſſue ſuch a *ſuperſedeas.* But by the court, The *ſuperſedeas* is well ſent by the juſtices, and to prevent the charge of an appeal. And the laſt order was confirmed. *Str.* 6.

Cannot determine in caſes of property.

4. In the caſe of the *mayor and corporation of York* againſt Sir *Lionel Pilkington*, *May* 14, 1742, The plaintiffs claimed the ſole right of fiſhing in the river *Ouſe*, and the defendant claimed a right likewiſe; and a bill and croſs bill were brought in chancery to eſtabliſh their ſeveral rights. Whilſt theſe ſuits were depending, the plaintiffs cauſed the agents of the defendant to be indicted at *York* ſeſſions for a breach of the peace in fiſhing in their liberty. A motion was made in behalf of the defendant, to ſtop the proſecution. By the lord chancellor *Harkwicke:* This court hath not originally and ſtrictly any reſtraining power over criminal proſecutions; but, in this caſe, if the defendant had applied to the attorney general he would have granted a *noli proſequi.* If an action of treſpaſs had been brought, this court would have ſtopped them. But, tho' I cannot grant an injunction, yet as the parties have ſubmitted their right to this court, I can make an order to reſtrain the parties from proceeding at the ſeſſions, till the hearing of the cauſe in this court, and till further order. Which order was made accordingly. 2 *Atk.* 302.

Not to condemn any perſon unheard.

5. In ſummary convictions, the party ought to be heard, and for that purpoſe ought to be ſummoned in fact; and if the juſtice proceed againſt a perſon without ſummoning him, it would be a miſdemeanor in him, for which an information would lie. 1 *Salk.* 181. *L. Raym.* 1407. *Str.* 678.

But before an information is granted, the court will firſt require, that the conviction be removed before them. *Str.* 915.

E. 11 *G.* 2. *K.* and *Harwood.* The defendant being a juſtice of the peace, was convicted on an information, for a conviction by him made of an alehouſe-keeper, who was never ſummoned or heard. It was moved, as of courſe, to diſpenſe with his appearance. This was oppoſed, unleſs there was ſome reaſon given, or affidavit made. And upon debate the court reſolved, it was not of courſe; and the defendant afterwards appeared in perſon. *Str.* 1088.

6. *M.*

6. *M.* 9 *G. K.* againſt *Todd* and others. By the 6 *G. c.* 21. the juſtices of the peace have a juriſdiction given them in ſome caſes to receive an information, and make their determination, upon a ſeizure of brandy. Upon information exhibited by the officer of the cuſtoms, the fact appeared not to warrant the ſeizure; but the juſtice, in favour of the officer refuſed to diſmiſs the information, ſo as the owners might have their brandy again. And now a *mandamus* was moved for, to compel him to determine the matter; which was granted accordingly. *Str.* 530. Refuſing to proceed in a cauſe depending before them.

H. 7 *G. K.* againſt *Newton* and others. By the 1 *G. c.* 13. *ſ.* 11. it is enacted, that two juſtices may ſummon any perſon to take the oaths before them; and if they do not appear, then on oath of ſerving ſuch ſummons, the juſtices are to certify the ſame to the quarter ſeſſions, where if the party ſo ſummoned doth not appear to take the oaths, he ſhall ſtand convicted of recuſancy. The defendants were juſtices of the peace, and iſſued their ſummons accordingly; but coming afterwards to underſtand, that the party was a gentleman of faſhion, and not ſuſpected to be againſt the government; leſt a tranſaction of this nature ſhould be an imputation upon him, they refuſed to give the proſecutor his oath of the ſervice of ſuch ſummons, that the matter might go no further. And now upon motion againſt them for an *information*, the court declared, that the juſtices had no diſcretionary power to refuſe to put the act in execution, and therefore granted an information againſt them. *Str.* 413.

7. Where a ſpecial authority is given to juſtices out of ſeſſions, it ought to appear in their orders, that that authority was exactly purſued. 2 *Salk.* 475. Authority to appear on the face of their orders.

8. In all caſes where juſtices may hear and determine out of ſeſſions (*viz.* on their own view, or confeſſion, or oath of witneſſes) the juſtices ought to make a record in writing under their hands of all the matters and proofs; which record notwithſtanding in many caſes they may keep by them. *Dalt. c.* 115. To make a record of their proceedings.

9. And if upon ſuch conviction, the offender is to be fined to the king, then the juſtices are to eſtreat ſuch fine, and to ſend the eſtreat into the exchequer, whereby the barons of the exchequer may cauſe the ſaid fine or forfeiture to be levied for the king's uſe. *Dalt. c.* 115. To eſtreat fines.

10. Lord *Hale* ſays (contrary to the opinion of Lord *Coke*) that the juſtices out of ſeſſions may iſſue their warrant for apprehending perſons charged of crimes within the cognizance of the ſeſſions, and bind them over to appear at the ſeſſions, although the offender be not yet indicted, 1 *H. H.* 579. Whether a juſtice may iſſue his warrant for offences cognizable only in the ſeſſions.

But

But in another place he ſays, this ſeemeth doubtful; and that one thing which ſeemeth to make againſt it is, that in moſt caſes of this nature, though the party were indicted, or an information preferred, yet a *capias* was not the firſt proceſs, but a *venire facias*, and *diſtringas*. 2 H. H. 113.

And Mr. *Hawkins* on this point ſaith thus: It ſeems that anciently no one juſtice could legally make out a warrant for an offence againſt a penal ſtatute, or other miſdemeanor, cognizable only by a ſeſſions of two or more juſtices; for that one ſingle juſtice hath no juriſdiction of ſuch offence, and regularly thoſe only who have juriſdiction over a cauſe can award proceſs concerning it; yet the long, conſtant, univerſal and uncontrolled practice of juſtices of the peace, ſeems to have altered the law in this particular, and to have given them an authority in relation to ſuch arreſts, not now to be diſputed. 2 *Haw.* 84.

However, as the authority of juſtices of the peace is by the ſtatute law, and no ſtatute hath expreſly given to them ſuch power (unleſs in ſpecial caſes; which operate againſt, rather than eſtabliſh, a general power); it ſeemeth beſt in ordinary caſes, and more conſonant to the practice of the ſuperior courts, to iſſue a ſummons againſt the offender, and not a warrant, in the firſt inſtance; unleſs in caſes of felony, or where the offender in other reſpects is to ſuffer corporal puniſhment.

Not to truſt to abſtracts and abridgments.

11. Foraſmuch as moſt of the buſineſs of a juſtice of the peace, conſiſteth in the execution of divers ſtatutes, which cannot be ſufficiently abridged, but that they will come ſhort of the ſubſtance and body thereof, therefore it ſhall be ſafeſt for the juſtices to have an eye to the ſtatutes at large, and thereby to take their further and better directions, for their whole proceedings: For (as lord *Coke* obſerveth) abridgments are of good and neceſſary uſe to ſerve as tables, but not to ground any opinion, much leſs to proceed judicially upon them. *Dalt. c.* 173.

Not to truſt to clerks and tranſcribers.

12. In like manner, it is not ſafe for them to truſt altogether to the care and judgment of their clerks, in drawing warrants and other inſtruments; much leſs, to the ſkill of pariſh officers in making copies of orders, and the like: But rather it is adviſable to have good printed forms; and inſtead of copies to be taken upon occaſion, to make out duplicates.

VI. Their

VI. Their indemnity and protection by the law in the right execution of their office; and their puniſhment for the omiſſion of it.

1. A juſtice of the peace is ſtrongly protected by the law, in the juſt execution of his office. Their indemnity.

Thus in the firſt place, he is not to be ſlandered or abuſed; as appears by the following report: *M.* 11 *G. Aſton* and *Blagrave.* The plaintiff declared, that he was a juſtice of the peace, and that upon a *colloquium* of him and the execution of his office, the defendant ſaid, *You are a raſcal, a villain, and a lyar.* After verdict for the plaintiff it was moved in arreſt of judgment, that theſe words are not *actionable.* It was urged for the plaintiff; There is a great difference between magiſtrates and common tradeſmen: Words of the latter muſt affect them in their particular way of dealing; but any thing that tends to impeach the credit of the former is actionable: And although an *indictment* might not lie for theſe words, as perhaps not tending to a breach of the peace, yet nevertheleſs they are *actionable*; for in many caſes words are actionable which are not indictable. After conſideration, *Pratt* Ch. J. delivered the opinion of the court, that though *raſcal* and *villain* were uncertain, yet being joined with *liar*, and ſpoken of a juſtice of the peace, they did import a charge of acting corruptly and partially, and therefore there ought to be judgment for the plaintiff. *Str.* 617. L. *Raym.* 1396.

Afterwards, *T.* 15 *G.* 2. *Kent* and *Pocock.* Theſe words ſpoken of a juſtice of the peace in the execution of his office, and relating thereto, were held actionable, *viz. Mr.* Kent *is a rogue*; according to the aforeſaid caſe of *Aſton* and *Blagrave. Str.* 1168.

E. 7 *G. K.* and *Revel.* The defendant was *indicted*, for ſaying of Sir *Edward Lawrence* a juſtice of the peace, in the execution of his office, *You are a rogue and a liar.* It was moved, after verdict for the king, in arreſt of judgment, that though the juſtice might have committed him for the contempt, yet the words are not *indictable*, ſince it is not to be preſumed they would provoke the juſtice to a breach of the peace, which is the reaſon why indictments have been held to lie for words. But by the court, The allowing he might be committed, ſhews they were indictable. It is true, the juſtice may make himſelf judge and puniſh him immediately; but ſtill, if he thinks proper to proceed leſs ſummarily by way of indictment, he may.

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The true diſtinction is, that where the words are ſpoken in the preſence of the juſtice, there he may commit; but where it is behind his back, the party can be only indicted for a breach of the peace. Judgment for the king. *Str.* 420.

T. 14 *G.* 2. *K.* and *Pocock.* An information was moved for againſt the defendant, on account of words ſpoken of Mr. *Kent* a juſtice of the peace. And the affidavit ſtated that in a converſation about a warrant granted by Mr *Kent*, the defendant aſked, if Mr. *Kent* was a ſworn juſtice; and bring anſwered, to be ſure he was, elſe he would not act, the defendant replied, *If he is a ſworn juſtice he is a rogue, and a foreſworn rogue.* To this it was objected, that the words were not ſpoken to him in the execution of his office, but only in relation to what he had formerly done; And by the court, There ought to be no information; it is not the ſame inſult and contempt, as if ſpoken to him in the execution of his office, which would make it a matter indictable. *Str.* 1157.

Nevertheleſs, according to the diſtinction in the aforeſaid caſe of *Aſton* and *Blagrave*, although an *information* or *indictment* might not lie, yet it doth not follow but that the words were *actionable*; and ſo it ſeemeth to have been held in the caſe laſt but one abovementioned, of *Kent* and *Pocock*, which ſeemeth to have been no other than an *action* brought for this very ſame offence, after it had been determined that an *information* would not lie.

In the next place; he is not puniſhable at the ſuit of the party, but only at the ſuit of the king, for what he doth as judge, in matters which he hath power by law to hear and determine without the concurrence of any other; for regularly no man is liable to an action for what he doth as judge: But in caſes wherein he proceeds miniſterially, rather than judicially, if he acts corruptly, he is liable to an action at the ſuit of the party, as well as to an information at the ſuit of the king. 2 *Haw.* 85.

And more explicitly, in the caſe of the king againſt *Young* and *Pitts*, eſquires, juſtices of the peace for *Wiltſhire*, *E.* 31 *G.* 2. which was upon an information moved for againſt the juſtices, for arbitrarily and unreaſonably refuſing to grant an alehouſe licence; lord *Mansfield* Ch. J. declared, that the court of king's bench hath no power or claim to review the reaſons of juſtices of the peace, upon which they form their judgments in granting licences, by way of appeal from their judgments, or over-ruling the diſcretion in that behalf intruſted to them. But if it clearly appears, that the juſtices have been partially, maliciouſly,

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or corruptly influenced in the exerciſe of this diſcretion, and have (conſequently) abuſed the truſt repoſed in them, they are liable to proſecution, by indictment, or information; or even, poſſibly, by action, if the malice be very groſs and injurious. If their judgment is wrong, yet their heart and intention pure, God forbid that they ſhould be puniſhed. And he declared that he ſhould always lean towards favouring them; unleſs partiality, corruption, or malice ſhall clearly appear. Mr. Juſtice *Deniſon* alſo expreſsly allowed the diſcretionary power of the juſtices in granting licences, without appeal from their judgments, or having their juſt and honeſt reaſons reviewed by any body. But yet, an improper and unjuſt exerciſe of their diſcretion, he ſaid, ought to be under controul. But it muſt be a clear and apparent partiality or wilful miſbehaviour, to induce the court to grant an information: Not a mere error in judgment. Mr. Juſtice *Foſter* concurred in the ſame general principles. And Mr. Juſtice *Wilmot* was alſo very explicit, that the ſole diſcretion of granting licences is in the juſtices of the diviſion. Which being ſo, the rule is invariable, that this court will never interpoſe to puniſh a juſtice of the peace for a mere error in judgment. Therefore, even ſuppoſing the juſtices in the preſent caſe to have been miſtaken from beginning to end; yet there is no ground, from any of the affidavits, to infer any partiality, malice or corruption. And the court, being unanimouſly of opinion, that the juſtices had acted in this affair with candour and impartiality, diſcharged the rule to ſhew cauſe, with coſts. *Burrow, Mansfield.* 556.

And in the caſe of the *King* and *Cox*, *E.* 32 *G.* 2. On ſhewing cauſe why an information ſhould not be granted againſt the defendant being a juſtice of the peace, for refuſing to receive an information againſt a baker for exerciſing his trade on a Sunday; the court declared, that they would never grant an information againſt a juſtice for a mere error in judgment: But in this caſe they were of opinion that the juſtice had acted right in refuſing; and they ordered the rule to be diſcharged, with coſts. *Burrow, Mansfield.* 785.

And finally, in the caſe of the *King* againſt *Palmer* and *Baine*, eſquires, and others, *E.* 1 *G.* 3. Upon ſhewing cauſe why an information ſhould not be granted againſt two juſtices of the peace and others, for a miſdemeanor, relating to the conviction of a poacher, and the circumſtances attending it; the court thought proper, on conſideration of the affidavits, to diſcharge the rule, as to all

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the defendants; with coſts to be paid to the juſtices, but without coſts as to the others. And they were, upon this occaſion, moſt explicit in their declaration, that even where a juſtice acts illegally (which however was not the preſent caſe), yet if he has acted honeſtly and candidly, without oppreſſion, malice, revenge, or any bad view or ill intention whatſoever, the court will never puniſh him in this extraordinary courſe of an *information*; but leave the party complaining to their ordinary legal remedy or method of proſecution, by *action* or by *indictment*. Burrow, Mansfield. 1162.

And the juſtice ſhall not be liable to be puniſhed both ways, that is, both criminally and civilly; but before the court will grant an information, they will require the party to relinquiſh his civil action, if any ſuch is commenced. And even in the caſe of an indictment, and though the indictment is actually found, yet the attorney general (on application made to him) will grant a *noli proſequi* upon ſuch indictment, if it appear to him that the proſecutor is determined to carry on a civil action at the ſame time. *Burrow, Mansfield.* 719. *K.* and *Fielding.* H. 32 G. 2.

In the next place, by the 7 *J. c.* 5. it is enacted, that if any action ſhall be brought againſt a juſtice for any thing done by virtue of his office, he may plead the general iſſue, and give the ſpecial matter in evidence; and if he recovers, he ſhall have double coſts.

And by the 21 *J. c.* 12. ſuch action ſhall not be laid, but in the county where the fact was committed.

And moreover, by the 24 *G.* 2. *c.* 44. it is enacted, that no writ ſhall be ſued out againſt, or copy of any proceſs at the ſuit of a ſubject ſhall be ſerved on any juſtice, for any thing done by him in the execution of his office; until notice in writing ſhall have been given to him, or left at his uſual place of abode, by the attorney for the party, one month before the ſuing out, or ſerving the ſame; containing the cauſe of action, and indorſed with his name and place of abode; for which he ſhall be intitled to a fee of 20s, and no more. *ſ.* 1.

And unleſs it is proved upon the trial, that ſuch notice was given, the juſtice ſhall have a verdict and coſts. *ſ.* 3.

And the juſtice may at any time, within one month after ſuch notice, tender amends to the party complaining, or to his attorney; and if the ſame is not accepted, he may plead ſuch tender in bar to the action, together with the plea of not guilty, and any other plea with leave of the court; and

and if upon iſſue joined, the jury ſhall find the amends tendered to have been ſufficient, they ſhall give a verdict for the defendant; and in ſuch caſe, or if the plaintiff ſhall be nonſuit, or diſcontinue, or if judgment be given for the defendant upon demurrer, the juſtice ſhall be intitled to the like coſts, as if he had pleaded the general iſſue only. And if the jury ſhall find that no amends, or not ſufficient, were tendered, and alſo againſt the defendant on ſuch other plea, they ſhall give a verdict for the plaintiff, and ſuch damages, as they ſhall think proper, which he ſhall recover with coſts. *ſ.* 2.

And if the juſtice ſhall neglect to tender amends, or ſhall have tendered inſufficient, before the action brought, he may, by leave of the court before iſſue joined, pay into court ſuch ſum as he ſhall ſee fit; whereupon ſuch proceedings and judgment ſhall be had, as in other actions where the defendant is allowed to pay the money into court. *ſ.* 4.

And no evidence ſhall be permitted to be given by the plaintiff on trial, of any cauſe of action, except ſuch as is contained in the notice. *ſ.* 5.

And no action ſhall be brought againſt any conſtable or other officer, or any perſon acting by his order and in his aid, for any thing done in obedience to the warrant of a juſtice, until demand hath been made, or left at the uſual place of his abode, by the party, or by his attorney, in writing, ſigned by the party demanding the ſame, of the peruſal and copy of ſuch warrant, and the ſame hath been refuſed or neglected for ſix days after ſuch demand: And if after compliance therewith, any ſuch action ſhall be brought, without making the juſtice, who ſigned the warrant, defendant; on producing and proving ſuch warrant at the trial, the jury ſhall give their verdict for the defendant, notwithſtanding any defect of juriſdiction in the juſtice. And if ſuch action be brought jointly againſt the juſtice and conſtable, on proof of ſuch warrant the jury ſhall find for the conſtable: And if the verdict ſhall be given againſt the juſtice, the plaintiff ſhall recover his coſts againſt him, to be taxed in ſuch manner by the proper officer, as to include ſuch coſts as the plaintiff is liable to pay to ſuch defendant, for whom ſuch verdict ſhall be found. *ſ.* 6.

And moreover, no action ſhall be brought againſt any juſtice for any thing done in the execution of his office, unleſs commenced within ſix months after the act committed. *ſ.* 8.

2. On the other hand, it is enacted likewiſe, by the laſt mentioned ſtatutes, that where the plaintiff in ſuch action againſt Their puniſhment.

againſt a juſtice, ſhall obtain a verdict, and the judge ſhall in open court certify on the back of the record, that the injury for which ſuch action was brought, was wilfully and maliciouſly committed, the plaintiff ſhall have double coſts. 24 *G.* 2. *c.* 44. *ſ.* 7.

Moreover, if a juſtice will not, on complaint to him made, execute his office, or ſhall miſbehave in his office, the party grieved may move the court of king's bench for an information, and afterwards may apply to the court of chancery to put him out of the commiſſion. *Crom.* 7. 2 *Atk.* 2.

But the moſt uſual way of compelling them to execute their office in any caſe, is by writ of *mandamus* out of the king's bench.

And in actions brought againſt the juſtices, (for miſdemeanor in the execution of their office), they are obliged to ſhew the regularity of their convictions; and the informations laid before them, upon which the convictions are grounded, muſt be produced and proved in court. 1 *Seſſ. Caſ.* 372. *Hill* and *Bateman.* 12 *G.*

In the caſe of the *King* and *Symonds*, *E.* 9 *G.* 2. An information was moved for againſt the defendant, for aſſaulting and beating the mayor of *Yarmouth*, being a juſtice of the peace, in the execution of his office. On ſhewing cauſe, the queſtion was, Whether the defendant could juſtify, the mayor having ſtruck him firſt. By lord *Hardwicke* chief juſtice: He may juſtify it; for though a magiſtrate is protected by the law whilſt he is in the execution of his office, yet in this inſtance he hath forfeited that protection, by beginning a breach of the peace himſelf. *Caſes in the time of Lord Hardwicke*, 240.

T. 12 *G.* 3. *K.* & *Skinner.* On motion to quaſh an indictment againſt Mr *Skinner* a juſtice of the peace for the town of Poole, for ſcandalous words ſpoken by him in the general ſeſſions of the peace, in which he ſaid to the grand jury, "You have not done your duty; you "have diſobeyed my commands: you are a ſeditious, "ſcandalous, corrupt, and perjured jury."——It was urged in ſupport of the indictment, that it was of high importance that the jury, who are one of the main pillars of the conſtitution, ſhould not be thrown into open contempt; that an action by any of them ſeparate would not be good, becauſe the offence is not againſt them in their ſeveral and ſole capacity, but againſt them as one body, as a grand jury; and neither could they ſue jointly, becauſe they are no corporate body: therefore the remedy by indictment is proper and neceſſary, and is

the only remedy they can have, this being the natural and uſual proceſs in all crimes againſt the public.—On the other hand, againſt the indictment, it was contended, that this is a new and very ſingular proceeding. If the words were not ſpoken againſt the jury in the execution of their office, they are not words liable to an indictment; and if they were ſpoken, whilſt they were ſitting in the execution of their office, the judge was alſo ſitting in the execution of his office; and the principle is clear, that a judge of a court of record is not liable to an indictment for words ſpoken by him ſitting as judge.—— By lord Mansfield chief juſtice: As the counſel in ſupport of the indictment have not found any precedent in the hiſtory of England for an indictment of this kind, I am willing to give them time till next term to find any. What the counſel on the other ſide have obſerved is very juſt; neither party, jury, nor judge, can be put to anſwer, civilly or criminally, for words ſpoken in office. If the words ſpoken are opprobrious, or not relevant to the caſe in hand, the court will take notice of them as a contempt, and examine on information. If any thing of *mala mens* is found on ſuch inquiry, it will be puniſhed ſuitably. The words are extremely improper. If the party were not a borough juſtice, I think there might be ground to apply to the great ſeal to remove him from his office. But to go upon an indictment, would be ſubverſive of all ideas of a conſtitution. If any precedent can be found, you ſhould have time to make uſe of it; otherwiſe it would be proper to quaſh the indictment immediately. *Loffi.* 55.

By the 18 *G.* 2. *c.* 20. If any perſon ſhall act as juſtice without a qualification of 100l. a year, and without making oath at the ſeſſions, as before is mentioned; he ſhall forfeit 100l, half to the poor, and half to him that ſhall ſue, with full coſts.

Other matters relating to the very extenſive office of this magiſtrate, may be found under their proper heads, in almoſt every title of this book.

Labourers. See **Servants.**
Landlord and tenant. See **Diſtreſs.**

Land tax.

THE land tax hath ſucceeded into the place of the ancient fifteenths and ſubſidies: And the land tax acts are framed in many reſpects after the manner of the ancient ſubſidy acts.

We meet with the payment of *fifteenths* as far back as the ſtatute of *Magna Charta*; in the concluſion of which, the parliament grant to the king, for the conceſſions by him therein made, *a fifteenth part of all their moveable goods.*

This taxation was originally ſet upon the ſeveral *individuals.* Afterwards, to wit, in the eighth year of *Edward* the third, a certain ſum was rated upon every town, by commiſſioners appointed in the chancery for that purpoſe, in like manner as commiſſioners are now appointed by the ſeveral land tax acts for carrying the ſaid acts into execution; which commiſſioners rated every town at the fifteenth part of the value thereof at that time, and their taxation was recorded in the exchequer: And the inhabitants rated themſelves proportionably for their ſeveral parts, to make up the general ſum upon the whole townſhip. This *fifteenth* amounted in the whole to 29,000l, or near thereabouts.

But as the neceſſities of government multiplied, and the values of things increaſed, this fifteenth was inſufficient for the occaſions of the public; and thereupon the number of fifteenths was augmented to two or three fifteenths. Which ſtill proving defective, another and quite different taxation was ſuperadded, namely the *ſubſidy*; which was an aid to be levied of every ſubject of his lands or goods, after the rate of 4s in the pound for lands, and 2s 8d for goods. And accordingly, in the ancient ſubſidy acts, there is firſt a grant of ſo many *fifteenths*, and then the grant of a *ſubſidy.*

Theſe *fifteenths* were certain, as hath been ſaid, from the time of the eighth of *Edward* the third; but the *ſubſidy* was uncertain, and amounted anciently to about 70,000l; and a ſubſidy of the clergy at the ſame time (including the monaſteries) was 20,000l. In the 8 *Eliz.* a ſubſidy amounted to 120,000l. In the 40 *Eliz.* it was not above 78,000l. Afterwards it fell to 70,000l; and by reaſon of a looſe and uncertain way of aſſeſſing the ſame, kept continually decreaſing, until the parliament found it neceſſary to change the method of taxation, and in the time of the long parliament certain ſums were fixed upon the ſeveral counties; which courſe of taxation ſtill continues.

2 *Inſt.*

2 *Inſt.* 77. 4 *Inſt.* 33, 34. *Hume's Hiſt. of Eng. vol.* 5. 226, 7. *Gilb. Excheq. ch.* 14.

The land tax acts are annual, but with little variation. The ſubject matter thereof, according to the natural order of the buſineſs, diſtributes itſelf under the following heads:

I. The firſt meeting of the commiſſioners, for iſſuing precepts to return aſſeſſors.

II. The ſecond meeting: Charge to the aſſeſſors, and therein concerning the manner of laying the aſſeſſment.

III. The third meeting: Signing the aſſeſſment, with warrant to collect.

IV. Fourth meeting: The appeal.

V. Collecting.

VI. Collector paying to the receiver general.

VII. Receiver paying into the exchequer.

VIII. Duplicates to be tranſmitted.

IX. General penalty on officers not doing their duty.

X. Indemnity of officers in doing their duty.

I. The firſt meeting of the commiſſioners, for iſſuing precepts to return aſſeſſors.

Qualification of commiſſioners.

1. No perſon ſhall be capable to act as commiſſioner in any county or riding at large (the counties of *Merioneth*, *Cardigan*, *Carmarthen*, *Glamorgan*, *Montgomery*, *Pembroke*, and *Monmouth* excepted) unleſs he be ſeized of lands, tenements, or hereditaments, being freehold, copyhold, or leaſehold, over and above all ground rents, incumbrances and other reſervations, payable out of or in reſpect of ſuch leaſehold eſtates, which were taxed or did pay, in the year next before, in the ſame county or riding, for the value of 100*l* a year of his own eſtate.

But this ſhall not extend to commiſſioners being inhabitants of cities, boroughs, towns corporate, or cinque ports, or the inns of court or chancery.

And no attorney or ſolicitor, or perſon practiſing as ſuch, ſhall act as commiſſioner, without having 100*l* a year as above. Nor ſhall any receiver general, or collector of any aid granted to his majeſty, act as commiſſioner.

And if any commiſſioner diſabled ſhall preſume to act, he ſhall forfeit 50*l* to him who ſhall ſue (in ſix months, 5 *G.* 3. *c.* 21.)

And if there is not a ſufficient number of qualified commiſſioners within any city or place for which commiſſion-

ers are particularly appointed, the commiſſioners of the county may act therein.

To take the oaths.

2. And no commiſſioner ſhall act, until he hath taken the oaths of allegiance, ſupremacy, and abjuration, which ſhall be adminiſtred to him by two or more commiſſioners, on pain of 200 l to the king.

Time and place of meeting.

3. And they ſhall meet at the moſt uſual and common places of meeting, on or before *April* 30.

Subdividing.

4. At which firſt meeting, they may ſubdivide themſelves, and the other commiſſioners not then preſent, ſo as three or more be appointed for each diviſion; but ſhall not thereby reſtrain any commiſſioners from acting in any other part of the county.

And ſhall ſet down in writing, who, and what number of the commiſſioners ſhall act in each diviſion, and ſhall deliver a copy thereof to the receiver general.

Receiver general, who.

5. Which receiver general ſhall be appointed by the king, or in purſuance of his directions; and ſhall have a ſalary allowed to him by the lords of the treaſury, not exceeding 2 d a pound.

And the death or removal of a receiver general ſhall be notified to two or more commiſſioners, by the commiſſioners for the affairs of taxes, before the time of the firſt quarterly payment.

And the receiver general ſhall give notice under his hand and ſeal of his appointing a deputy (which appointment ſhall be alſo under hand and ſeal) to two or more commiſſioners, in ten days after the firſt meeting, and in ten days after the death or removal of a deputy.

Commiſſioners to ſet down the ſums on each diviſion.

6. And the ſaid commiſſioners, at ſuch firſt meeting, ſhall ſet down in writing the ſums to be charged on each diviſion, in proportion to the ſums which were aſſeſſed thereon by the land tax act, in the fourth year of the reign of W. & M.

Note: There is ſaid to have been a hearing on *Feb.* 10, 1746, before the barons of the exchequer, upon the queſtion, whether the commiſſioners of the land tax, at their general meeting for the city and liberty of *Weſtminſter*, have power to alter the *quota's* in their ſeveral pariſhes, which was continued next day, and that the barons declared they could not depart from the 4 *W. & M.* and the parliament only could redreſs the aggrieved pariſhes.

But where the proportion upon any diviſion ſhall exceed 4 s in the pound, by reaſon of the eſtates of papiſts and nonjurors having been charged double within ſuch diviſion, in the 4 *W. & M.* (the ſum raiſed in that year on every diviſion governing the proportions at preſent) and the ſaid eſtates are not now liable to pay double, by reaſon

ſon of their being in the hands of perſons who have taken the oaths; in ſuch caſe, two or more commiſſioners may certify the ſame to the barons of the exchequer, who may order ſo much of the proportion upon ſuch diviſion, to be abated, as exceeds the full ſum of 4s in the pound upon the eſtates therein.

Iſſuing precepts to return aſſeſſors.

7. Alſo, at ſuch firſt meeting, two or more commiſſioners ſhall direct their ſeveral or joint precepts (A) to ſuch inhabitants, high conſtables, petty conſtables, bailiffs and other officers and miniſters, and ſuch number of them as they ſhall think moſt convenient, to be preſentors and aſſeſſors, requiring them to appear before the ſaid commiſſioners, at ſuch time and place, not exceeding eight days after the date of ſuch precept, as they ſhall appoint.

They ſhall alſo appoint aſſeſſors and collectors in privileged and extraparochial places.

But no perſon in a city, borough, or town corporate, ſhall be compelled to be an aſſeſſor or collector out of the limits thereof.

[And by the 20 *G.* 3. *c.* 17. At the ſaid meeting for appointing aſſeſſors, the commiſſioners ſhall cauſe to be delivered to each aſſeſſor, a printed form of an aſſeſſment, according to which they ſhall make their aſſeſſments; which ſhall be in this manner:

County of N. to wit. For the pariſh of —— in the ſaid county.

An aſſeſſment made in purſuance of an act of parliament paſſed in the —— year of his majeſty's reign, for granting an aid to his majeſty by a land tax to be raiſed in Great Britain, for the ſervice of the year ——

Names of proprietors.	Names of occupiers.	Sums aſſeſſed.
A. B. ——	Himſelf. ——	— — —
A. B. ——	C. D. ——	— — —
E. F. ——	C. D. ——	— — —
C. D. ——	G. H. ——	— — —
J. K. and L. M. ——	N. O. ——	— — —
P. Q. ——	R. S. and T. U. ——	— — —

Signed this —— day of —— 17——.

By us,
A. B.
C. D. } Aſſeſſors.

And if any perſon or perſons ſhall hold or occupy meſſuages, lands, or tenements, belonging to different owners, the ſame ſhall be ſeparately and diſtinctly rated in ſuch aſſeſſments, that the proportion of the land tax to be paid by each ſeparate owner reſpectively may be known and aſcertained.]

II. The ſecond meeting: Charge to the aſſeſſors, and therein concerning the manner of laying the aſſeſſment.

Aſſeſſor not appearing.

1. Aſſeſſor not appearing, without lawful excuſe to be made out on the oath of two witneſſes; or appearing, and refuſing to ſerve, ſhall forfeit to the king, not more than 5l, nor leſs than 40s.

Charge to the aſſeſſors.

2. The commiſſioners ſhall openly read, or cauſe to be read to the aſſeſſors, the ſeveral rates, duties, and charges, and openly declare the effect of their charge unto them, and how and in what manner they ought to make their aſſeſſments, and how to proceed in the execution of the act.

Which ſhall be in the manner following; that is to ſay,

Aſſeſſment on perſonal eſtates.

3. Towards raiſing the ſums required (ſuppoſing the tax to be laid at 4s in the pound for that year), the charge upon *perſonal* eſtates ſhall be thus: *viz.* All perſons having an eſtate in goods, wares, merchandizes, or other chattels, or perſonal eſtate whatſoever, within *Great Britain* or without, belonging to or in truſt for them, ſhall pay 4s in the pound, according to the true yearly value thereof; that is to ſay, for every 100l of ſuch ready money and debts, and for every 100l worth of goods, 20s; and after that rate for every greater or leſſer quantity. Excepting and deducting thereout ſuch ſums as they *bona fide* owe, and ſuch debts as the commiſſioners ſhall judge deſperate; and except ſtock upon lands and houſhold ſtuff, and debts and loans owing from his majeſty.

Every perſon having any publick *office* or employment and their ſubſtitutes ſhall pay 4s for every 20s of their ſalaries. Except military officers in the army or navy.

Every perſon having an *annuity or penſion* out of the exchequer, or out of any branch of the revenue, or to be paid by any perſon whatſoever, ſhall pay 4s for every 20s; except ſalaries charged upon lands which pay to the full, and except annuities eſpecially exempted by act of parliament. And except annuities paid to ſuperannuated commiſſion or warrant ſea officers, or to the widows of ſea officers ſlain in the ſervice of the crown. And except money

lent,

lent, or advanced to the government, on the ſecurity of the act. And except turnpike tolls, and the ſalaries of turnpike officers.

On real eſtates. 4. The charge upon *real* eſtates ſhall be as follows:— That the entire ſum may be raiſed, all manors, meſſuages, lands and tenements; all quarries, mines of coal, tin and lead, copper, mundick, iron, and other mines, iron mills, furnaces, and other iron works; ſalt ſprings, and ſalt works; all allom mines and works; all parks, chaſes, warrens, woods, underwoods, coppices; all fiſhings, tithes, tolls, annuities, and all other yearly profits; and all hereditaments whatſoever—ſhall be charged with as much equality and indifference as poſſible, by a *pound rate*, to make up the ſeveral ſums charged by the act on each county or place.

Rent charge. 5. Where manors, meſſuages, lands, tenements, tithes, and hereditaments are incumbered with rent charges, annuities, fee-farm rents, rent ſervice or other rents thereupon reſerved or charged, the owners thereof may detain out of the payment of the ſame, a proportionable ſhare of the land tax; provided that ſuch rent or annual payment amount to 20 s a year or more.

Fee-farm rents of the crown. 6. Receivers of fee-farm rents, or other chief rents due to the king, or to any perſon claiming by grant or purchaſe from him (by which are meant ſuch fee-farm rents only, as are anſwerable to the king, or have been purchaſed from the crown by virtue of the ſtatutes of 22 *C.* 2. *c.* 6. and 22 & 23 *C.* 2. *c.* 24. or one of them, and which before *March* 25, 1693, were not payable to any college, hoſpital, reader in the univerſities, or other perſon exempted) ſhall allow 4 s for every pound of the ſaid rents, and ſo proportionably for any greater ſum than 10 s, to the party paying the ſame; on pain of 20 l to the party grieved, with full coſts. Provided that ſuch deduction or allowance do not exceed the ſum aſſeſſed on the whole eſtate out of which ſuch purchaſed fee-farm rent iſſues.

Charities exempted. 7. But nothing herein ſhall charge any college or hall in *Oxford* or *Cambridge*, or the colleges of *Windſor*, *Eaton*, *Winton*, or *Weſtminſter*, or the corporation of the governors of the charity for the relief of the poor widows and children of clergymen, or the college of *Bromley*, or any hoſpital for or in reſpect of the ſites of the ſaid colleges, halls, or hoſpitals, or any of the buildings within the walls or limits of the ſame: Or any maſter, fellow, or ſcholar, or exhibitioner of any ſuch college or hall, or any reader, officer, or maſter of the ſaid univerſities, colleges, or halls, or any maſters or uſhers of any ſchools; for or in reſpect

of any ſtipends, wages, rents, profits, or exhibitions whatſoever, ariſing or growing due to them in reſpect of the ſaid ſeveral places or employments: Or any of the lands which before *March* 25, 1693, did belong to the ſites of any college or hall, or to *Chriſt*'s hoſpital, St. *Bartholomew*, *Bridewell*, St. *Thomas*, and *Bethlehem* hoſpitals in *London* and *Southwark*; or any other hoſpitals or alms-houſes, in reſpect of any rents, or revenues, which before *March* 25, 1693, were payable to them, being to be received and diſburſed for the immediate uſe and relief of the poor of the ſaid hoſpitals and alms-houſes only.

But this ſhall not diſcharge any tenants of any houſes or lands belonging to the ſaid colleges, halls, or hoſpitals, alms-houſes, or ſchools, who by their leaſes or other contracts are obliged to pay and diſcharge all rates, taxes, and impoſitions.

In general, all ſuch lands, revenues, or rents belonging to any hoſpital or alms-houſe, or ſettled to any charitable or pious uſe, as were aſſeſſed in the 4 *W. & M.* ſhall be liable; and no other lands, revenues, or rents, then belonging to any hoſpital or alms-houſe, or ſettled to any charitable or pious uſe, ſhall be charged, taxed, or aſſeſſed.

And if there ſhall be any queſtion, how far any lands or tenements, belonging to any hoſpital or alms-houſe, not exempted by name, ſhall be liable, the ſame ſhall be finally determined at the appeal.

[But lands given to charities ſince the 4 *W. & M.* ſhall not be exempted, becauſe the ſums upon the ſeveral diviſions being now charged as they were in that year, if any lands, not then exempted, ſhould now by being appropriated to charities or otherwiſe become exempted, this would lay a greater burden upon all the reſt. But charities then exempted do lay no greater burden upon the reſt now, becauſe they were not charged in the general ſum upon the diviſion at that time. And ſuch charities were exempted all along in the ſubſidy acts before.]

Poor exempted.

8. No poor perſon ſhall be charged with, or liable to the pound rate, whoſe lands, tenements, or hereditaments are not of the full yearly value of 20 s in the whole.

Who ſhall aſſeſs the aſſeſſors.

9. The commiſſioners ſhall aſſeſs the aſſeſſors.

In what places or diviſions perſons ſhall be aſſeſſed.

10. And all places, conſtablewicks, diviſions, and allotments, ſhall be aſſeſſed in ſuch county, hundred, rape, wapentake, conſtablewick, diviſion, place, or allotment, as they have been uſually aſſeſſed in.

Every perſon, whether he hath a certain place of reſidence or not, ſhall be rated for his *perſonal* eſtate, at the place

place where he is reſident at the time of the execution of the act: And if he is out of the realm at the time of the aſſeſſment, he ſhall be rated at the place where he was laſt abiding in the realm.

H. 7 *G. Purrett* and *Weeks.* At *Taunton* aſſizes, before *Price*, baron of the exchequer. The plaintiff was an exciſeman, and lived in the county of *Devon*, and executed his office in ſeveral pariſhes in that county, and alſo in a pariſh that extended into *Somerſetſhire.* And the commiſſioners of that county, apprehending they had a concurrent power with the commiſſioners of *Devon*, to tax him for his ſalary, on account that he executed his office in their county, they tax him accordingly, and for want of payment diſtrain. For which, treſpaſs was brought; and ruled, that it well lay; for though he rides about to the publick houſes in that county, yet he muſt be ſaid to keep his office in the town where he lives and hath his books, and there he was only taxable. *Str.* 417.

And every houſholder ſhall, on demand of the aſſeſſors, give an account of the names and qualities of ſuch perſons as ſhall ſojourn and *lodge* in their houſes: on pain of 5l, to be recovered as the other penalties.

In a *city or town corporate*, perſons having their houſe in one pariſh or ward, and goods in another, ſhall be aſſeſſed for the whole where they inhabit.

But if a perſon hath goods in any *other county* than where he is reſident, or had his laſt reſidence; he may be aſſeſſed for ſuch goods in the county where they are.

Members of parliament ſhall be aſſeſſed for their perſonal eſtate, at their manſion houſes, or places where they moſt uſually reſide during the interval of parliament.

Officers ſhall pay for the profits of their offices or employments, where the office is executed; and not where the ſalary is payable: But all other *penſions*, ſtipends, and annuities (not charged upon lands) ſhall be aſſeſſed where they are payable.

Officers in the receipt of the exchequer, and other publick offices, ſhall, on requeſt of the aſſeſſors, deliver *gratis* true liſts or accounts of all penſions, annuities, ſtipends, or other annual payments, and all fees, *ſalaries*, and other allowances; and if the tax thereupon ſhall not be afterwards paid, it ſhall be ſtopped in ſuch offices, and an account thereof ſhall be given to the collectors.

And deputies in office ſhall pay for their principals.

[By the 32 *G.* 2. *c.* 33. relating to the duty upon offices, it is provided, that in all future aſſeſſments to the land tax,

tax, ſuch officers ſhall not be aſſeſſed at an higher rate to the land tax, than they were in the year 1758.]

If a perſon, having two places of reſidence or otherwiſe, ſhall be *doubly charged* for any perſonal eſtate, office, or otherwiſe; then on certificate of two commiſſioners for the place of his laſt perſonal reſidence, under hand and ſeal, of the ſum charged upon him there, and on oath made of ſuch certificate before a juſtice of the place where the certificate ſhall be made, the perſon ſo doubly charged ſhall be diſcharged elſewhere.

If any perſon who ought to be taxed for his perſonal eſtate, ſhall, by changing his place of reſidence, or by any other fraud or covin eſcape from the taxation, and the ſame be proved before two commiſſioners or one juſtice where ſuch perſon reſideth, within one year after ſuch tax made, he ſhall pay treble, to be levied on his lands and goods, on certificate thereof made into the exchequer by ſuch juſtice or commiſſioners.

Every perſon ſhall be aſſeſſed for *lands* where they lie, and not elſewhere.

And ſuch tax ſhall be paid by the tenant, who ſhall deduct it out of his rent: and if any difference ſhall ariſe between landlord and tenant, the commiſſioners, or two of them, ſhall ſettle the ſame.

But contracts between landlord and tenant, or other perſons, about paying taxes ſhall not be avoided thereby.

Foreign miniſters.

11. The tax on foreign miniſters houſes ſhall be paid by the landlord.

Papiſts and non-jurors.

12. Every papiſt, or reputed papiſt, being 18 years of age, and upwards, who ſhall not have taken the oaths of allegiance and ſupremacy, 1 *W.* *c.* 8. ſhall pay double; unleſs he take the ſaid oaths, before two commiſſioners in ten days after the firſt meeting.

Alſo every perſon (whether papiſt or not) being 18 years old and upwards, and not having taken the ſaid oaths, and upon ſummons under hand and ſeal of two commiſſioners, refuſing to take them, or neglecting to appear, ſhall pay double in like manner.

But quakers refuſing to take the oaths, ſhall not pay double, if they ſhall make and ſubſcribe the declaration of fidelity in the act of 1 *W.* *c.* 18.

Appointing a time to bring in their aſſeſſments.

13. And at and after the charge given, the commiſſioners ſhall take care, that warrants be iſſued forth, and directed to two at leaſt of the moſt able and ſufficient inhabitants, appointing and requiring them to be aſſeſſors (B); and ſhall alſo therein appoint a day and place for the ſaid aſſeſſors to appear before them, and to bring in their aſſeſſments in writing.

14.

14. [And the ſaid aſſeſſors ſhall make three duplicates of the aſſeſſments; and ſhall (at leaſt 14 days before delivering the aſſeſſments to the commiſſioners) cauſe one of the ſaid duplicates, or a fair copy thereof, to be put up upon the door of the church or chapel; or if it be for an extraparochial or other place where there is no church or chapel, then on the door of the church or chapel next adjoining. 20 *G.* 3. *c.* 17.] Aſſeſſment to be put up on the church door.

III. The third meeting: Signing the aſſeſſment, with warrant to collect.

1. The aſſeſſor, after he is appointed, neglecting or refuſing to ſerve, or not appearing at ſuch third meeting, without lawful excuſe, to be proved on oath of two witneſſes, or not performing his duty, ſhall forfeit to the king any ſum not exceeding 40 l, to be levied as the rates, and charged to the receiver general. Penalty on the aſſeſſor not appearing.

2. At ſuch third meeting, the aſſeſſors ſhall deliver three duplicates of the aſſeſſment in writing, ſigned by them, to the commiſſioners. 20 *G.* 3. *c.* 17. Duplicates to be delivered in.

3. And ſhall then alſo return the names of two or more able and ſufficient perſons, living within the places where they ſhall be chargeable reſpectively, to be collectors; for whom the pariſh or place ſhall be anſwerable. Collectors names to be returned.

Which collectors ſhall, if required, give ſecurity to three commiſſioners, equal to the amount of the whole rate on the reſpective diſtricts, for paying to the receiver general ſuch money as ſhall come to their hands; on failure whereof, they may appoint two or more perſons who ſhall give ſuch ſecurity: if none are able or willing, then the perſons firſt named ſhall ſtand.

4. Then three or more commiſſioners ſhall ſign and ſeal the ſaid three duplicates, and deliver one of them to the collectors (whom they ſhall nominate and appoint) with warrant to the ſaid collector to collect the ſame. (C) Signing the duplicates.

5. And they ſhall at the ſame time give notice to the collectors, at what time and place appeals may be heard and determined: which ſhall be at leaſt 30 days from the time of ſigning and ſealing and delivering the duplicate to the collectors. Appointing the appeal day.

IV. Fourth meeting: The appeal.

1. Every collector ſhall, within ten days after the receipt of the duplicates, cauſe publick notice to be given in every pariſh church or chapel within his diſtrict, immediately after divine ſervice on the Lord's day, (if any ſuch divine ſervice ſhall be performed therein within that time) Notice of the appeal day to be given in the church.

time) of the time and place ſo appointed by the commiſſioners for hearing and determining appeals: And ſhall alſo, on the ſame day, cauſe the like notices to be fixed in writing on the door of ſuch church or chapel.

Collector ſhall ſuffer the duplicates to be inſpected.

2. And the collector ſhall permit the duplicates to be inſpected, at all ſeaſonable times of the day, without fee.

Appellant to give notice in writing.

3. Every perſon intending to appeal, ſhall give notice thereof in writing to one or more aſſeſſors, that they may attend, if they think fit, to juſtify the aſſeſſment.

Commiſſioner intereſted to withdraw.

4. And in caſe of any controverſy in apportioning the aſſeſſments, which concerns any commiſſioner, ſuch commiſſioner concerned therein in his own right, or in right of any other for whom he ſhall act as ſteward, agent, attorney, or ſolicitor, ſhall have no voice, but ſhall withdraw until it be determined; on pain of any ſum not exceeding 20 l, to be levied and paid as the other fines.

Relief in caſe of overcharge.

5. And where it appears by proof upon oath, that lands are overcharged by the pound rate, the commiſſioners at the appeal may make abatement, and cauſe the ſum abated to be reaſſeſſed upon the whole hundred, lathe, wapentake, or other diviſion where the overcharges happen, although the pound rate of 4 s in the pound be thereby exceeded; or upon any perſon therein undercharged; ſo that the whole ſum charged on ſuch diviſion be fully anſwered.

Appeal determined, final.

6. And appeals once heard and determined on the appeal day ſhall be final, without any farther appeal upon any pretence whatſoever; and without further trouble or ſuit in law, either in the king's bench or any other court.

Particular appeal with reſpect to parliamentary voters.

7. [If the name of the owner of any meſſuage, land, or tenement, intitled to vote for a knight of the ſhire, ſhall not appear to be inſerted in the aſſeſſment, he may, on giving notice in writing to one of the aſſeſſors, appeal to the ſaid commiſſioners; who ſhall amend the aſſeſſment as they ſhall ſee cauſe. And if any perſon ſhall think himſelf aggrieved by the determination of the commiſſioners, he may appeal to the juſtices at the next ſeſſions, giving ten days notice thereof to one of the commiſſioners who ſigned the duplicate, and to one of the aſſeſſors of the place where the eſtate lies: and the ſeſſions may award coſts to either of the parties, and by their order or warrant levy the ſame by diſtreſs. And the commiſſioners ſhall cauſe one of the duplicates ſo amended to be returned to the aſſeſſors, to be by them delivered to the high conſtable, and by him to the clerk of the peace, to be had recourſe to in his poſſeſſion in caſes of election of knights of the ſhire. 20 *G.* 3. *c.* 17.]

V. Col-

V. Collecting.

1. The collectors ſhall make demand of the parties themſelves if they can be found, or elſe at the place of their laſt abode, or upon the premiſſes charged. Demand.

2. And if any perſon ſhall refuſe or neglect to pay to the collector on demand, he may levy the ſame by diſtreſs and ſale of the goods of the perſon ſo neglecting or refuſing: [D. E. F.) Diſtreſs.

And where any refuſal, neglect, or reſiſtance ſhall be made, he may (calling the conſtable to his aſſiſtance) break open in the day time any houſe, and by warrant of two commiſſioners any cheſt, trunk, box, or other thing, where any ſuch goods are:

Or he may diſtrain upon the meſſuages, lands, tenements, and premiſſes; and the diſtreſs ſo taken, may keep for four days, at the charges of the owner; and if not paid in four days, then the diſtreſs ſhall be appraiſed by two inhabitants or other ſufficient perſons, and ſold by the collector, returning the overplus immediately (if any be) over and above the tax, and charge of taking and keeping the diſtreſs.

And if any difference ſhall ariſe upon taking the diſtreſs, the ſame ſhall be determined and ended by two commiſſioners.

In the caſe of the *India Company* and *Skinner*, *T. 7 W.* The defendant pleaded the general iſſue; and upon evidence it was objected, that the warrant was to break open in caſe of oppoſition; and this warrant was granted before any default; which ought not to be, no more than a warrant to diſtrain for poor rates before demand made; for the firſt ought to be only a confirmation of the aſſeſſment, and afterwards upon refuſal a new warrant is to be made for diſtreſs. And *Holt* Ch. J. ſaid, that ſtrictly it was ſo; but the practice having been, in this caſe of taxes, to grant ſuch a conditional warrant to diſtrain, *communis error facit jus.* Caſes of S. 250.

However it is ſafer not to leave the non-feaſance of the party to the judgment of the officers; but firſt to iſſue warrants empowering them to collect, as the act directeth; and then on proof of their refuſal, after ſummoning the party, grant a warrant to diſtrain.

3. If any perſon ſhall refuſe or neglect to pay for ten days after demand, or ſhall convey his goods ſo that diſtreſs cannot be made, he ſhall be committed (unleſs he is a peer) Commitment for want of diſtreſs.

peer) by warrant of two commiſſioners to the common gaol, until payment of the money aſſeſſed, and of the charges for bringing in the ſame.

Levying arrears.

4. Arrears may be levied by the preſent commiſſioners, in the ſame manner as the preſent tax.

And where lands or houſes are unoccupied, and no diſtreſs can be found thereon, the collectors for the time being may diſtrain at any time after; and ſhall diſtribute the money to thoſe who contributed to make it up.

Tax on woodlands how to be levied.

5. Where woodlands are aſſeſſed, and no diſtreſs can be had, the collector or conſtable by warrant of two commiſſioners, at ſeaſonable times of the year, may cut and ſell wood (except timber trees) to pay the tax.

Tax on tithes, tolls and other annual profits, how to be levied.

6. If the tax upon any tithes, tolls, profit of markets, fairs or fiſheries, or any other annual profits, not diſtrainable, ſhall not be paid in ſix days after demand, the collector, conſtable, or other officer, by warrant of two commiſſioners, may ſeize and ſell ſo much thereof, whereſoever found, as ſhall be ſufficient to pay the tax and charges occaſioned by non-payment.

VI. Collector paying to the receiver general.

Collector to pay to the receiver.

1. The collector ſhall pay the money received, to the receiver general or his deputy, quarterly; on or before *June* 24, *Sept.* 29, *Dec.* 25, and *March* 25, at ſuch time and place as two commiſſioners ſhall appoint; ſo as the whole ſums due be anſwered by the reſpective quarterly pay days; and ſo as the collector ſhall not be obliged to travel above ten miles from his uſual place of abode.

Receiver neglecting to attend.

2. And if the receiver general ſhall wilfully neglect to attend at the time and place appointed, he ſhall forfeit 100 l; half to the king, and half to him who ſhall ſue.

Receiver to give receipts.

3. The receiver general, or his deputy, ſhall give a receipt *gratis*.

Receiver to deliver liſts of money received.

4. And at every time and place appointed by the commiſſioners for the collectors to pay the money to the receiver general, he ſhall deliver a liſt of the money received by him, to ſuch perſon as two or more commiſſioners ſhall under their hands appoint; on pain of forfeiting a ſum not exceeding 20 l, to be paid into the exchequer, as the fines on aſſeſſors and collectors.

Collector to have 3 d a pound.

5. And the collectors ſhall have 3 d in the pound, for collecting and giving receipts, which they may detain out of the laſt payment.

Collector making default.

6. If the collector ſhall keep in his hands any part of the money by him collected, longer than the time limited, or

or ſhall pay any part of it to any other perſon than to the receiver general, or his deputy, he ſhall forfeit 40 l.

And if any collector ſhall refuſe or neglect to pay any ſum by him received, or ſhall detain in his hands any money by him received, and not pay the ſame as the act directs, two commiſſioners may impriſon him, or may ſeize his eſtate as well freehold as copyhold, and all other eſtates both real and perſonal, to him belonging, or which ſhall come to his heirs, executors, or adminiſtrators. Which ſaid commiſſioners may appoint a general meeting of the commiſſioners, and ſhall give public notice thereof at leaſt ſix days before: And the commiſſioners at ſuch general meeting may ſell ſuch eſtates, or any part thereof, for payment.

And the commiſſioners at any general meeting may ſummon collectors, who have fraudulently converted land tax money to their own uſe, and cauſe them to pay the ſame, to make up the deficiency if there is any in that place; and if there is no deficiency, then to diſcharge ſo much of the proportion charged on ſuch place, as that money doth amount to: And if ſuch collector ſhall neglect or refuſe ſo to pay, the commiſſioners may impriſon him, and ſeize and ſell his eſtate for payment.

And perſons diſtraining upon collectors, may keep in their hands ſo much charges for making and keeping, or otherwiſe relating to the diſtreſs, as two commiſſioners, who ordered the diſtreſs ſhall judge reaſonable.

Receiver to certify defaults.

7. And in caſe of failure in payment, the receiver general ſhall certify the ſame into the exchequer; and the place or perſons neglecting ſhall be liable to proceſs.

Deficiency to be reaſſeſſed.

8. If the full proportion upon any diviſion ſhall not be fully aſſeſſed, levied and paid; or if any ſhare thereof ſhall be aſſeſſed upon any perſon not able to pay, or upon any empty or void houſe or land, where it cannot be collected or levied; or, if through wilfulneſs, neglect, miſtake, or accident, the aſſeſſment ſhall not be paid to the receiver general or his deputy: the ſame ſhall be reaſſeſſed upon ſuch diviſion.

Receiver falſely returning arrears.

9. If the receiver general ſhall return any perſons in arrear who have paid, he ſhall forfeit treble damages to the party, and double the ſum unjuſtly certified, to the king.

And no receiver ſhall return any place in arrear, after three years; but the ſame ſhall be a debt on him and his ſecurities.

VII. Receiver to pay into the exchequer.

Receiver robbed.

1. No receiver general, or any of his agents, ſhall maintain an action againſt the hundred, on account of being robbed in carrying the money; unleſs they be together in company, and in number three at the leaſt.

Paying into the exchequer.

2. And the receiver general, within 20 days after the receipt, ſhall pay the money into the exchequer.

Which if he ſhall pay otherwiſe than into the exchequer, or not within the time limited; he ſhall forfeit 500 l. to him who ſhall ſue.

VIII. Duplicates to be tranſmitted. (G.)

Duplicates to be tranſmitted to the receiver general, and into the exchequer.

1. The commiſſioners on or before *Aug.* 8, or in 20 days after (all appeals being firſt determined), ſhall cauſe to be delivered to the receiver general or his deputy a ſchedule or duplicate in parchment under their hands and ſeals, containing the whole ſum aſſeſſed upon each pariſh or place, and alſo the chriſtian names and furnames of the reſpective aſſeſſors and collectors; and ſhall tranſmit a like ſchedule or duplicate into the king's remembrancer's office in the exchequer; for which the remembrancer, or his deputy, ſhall give a receipt *gratis*, on pain of 10 l.

And in the ſchedules to be tranſmitted into the king's remembrancer's office, the commiſſioners ſhall diſtinguiſh and ſet down the groſs ſum charged in any diviſion for double taxes, that it may be known how much the double taxes amount to in ſuch diviſion.

To the clerk of the peace.

2. And by the 18 *G.* 2. *c.* 18. which requires that no perſon ſhall vote in the election of a knight of a ſhire, for any lands which have not been aſſeſſed to the land tax for 12 calendar months next before, it is enacted, That the commiſſioners or 3 of them ſhall ſign and ſeal a duplicate of the copies of the aſſeſſments to be delivered to them by the aſſeſſors, after all appeals determined, and cauſe the ſame to be delivered to the clerk of the peace, to be kept amongſt the records, and inſpected by any perſon without fee.

Commiſſioners clerks to have 1 d. 2 q. in the pound.

3. All which being done, the commiſſioner's clerks, for their trouble in writing the aſſeſſments, duplicates, and copies, and all warrants, orders, and inſtructions relating thereunto, ſhall have 1½ d. in the pound, to be paid by the receiver general, according to the warrant of two commiſſioners.

And

And on the death or removal of the commiſſioners clerks, into whoſe cuſtody the duplicates of the ſeveral books of aſſeſſments, minute books, and other books and papers relating to the land tax have been delivered; ſuch clerks ſo removed, or the executors or adminiſtrators of ſuch clerk dying, ſhall within one calendar month after notice in writing ſigned by 3 or more commiſſioners, or a true copy thereof given or left at the uſual place of abode of ſuch perſon or perſons, deliver up all ſuch books and papers to ſuch perſon as the ſaid commiſſioners ſhall by ſuch notice appoint: on pain of 50 l, with full coſts; half to the receiver general in aid of the land tax, and half to him who ſhall ſue.

IX. General penalty on officers not doing their duty.

General penalty

1. If any aſſeſſor, collector, or other perſon, ſhall wilfully neglect or refuſe to perform his duty, or ſhall be guilty of fraud or abuſe, three or more commiſſioners may fine him, not exceeding 40 l; which ſhall not be taken off, but by a majority of the commiſſioners who impoſed it. To be levied by warrant of the ſaid commiſſioners, by diſtreſs and ſale; in default of diſtreſs (if not a peer) to be committed to priſon by two commiſſioners till payment.

To be paid to the receiver general.

2. And all fines ſhall be paid to the receiver general, and paid by him into the exchequer, and ſhall be inſerted in the duplicates to be tranſmitted into the office of the king's remembrancer.

Other penalties are annexed to the ſeveral offences.

X. Indemnity of officers in doing their duty.

Officers liable to no penalties but thoſe of the act.

1. No commiſſioner, aſſeſſor, or collector, ſhall be liable to any other penalties than thoſe inflicted by the act.

Treble coſts.

2. And perſons ſued for any thing done in the execution hereof, may plead the general iſſue, and have treble coſts.

Note; The buſineſs of the commiſſioners of the land tax, in relation to the duties upon the perquiſites of offices, is treated of under the title *Office*; and in relation to the duties upon houſes and windows, the ſame is treated of under the title *Houſes*.

A. Precept to the high conſtable to return aſſeſſors.

Weſtmorland. { To *John Bowneſs*, gentleman, high conſtable of the Eaſt Ward within the ſaid county.

WE *the commiſſioners of the land tax for the ſaid county, whoſe names are hereunto ſet, and ſeals affixed, do hereby require you forthwith upon the receipt hereof, to iſſue out your warrants to all the petty conſtables within your ſaid ward, in the form or to the effect here under following; that is to ſay,*

Weſtmorland, Eaſt Ward. { To the conſtable of ——

BY *virtue of a precept from the commiſſioners of the land tax for the ſaid county to me directed, you are hereby required forthwith to give notice to the laſt collectors of the ſaid duty within your conſtablewick, that they and every of them do perſonally appear before the ſaid commiſſioners at ——— in ——— in the ſaid county, on ——— the —— day of ——— at the hour of —— in the forenoon of the ſame day, in order to be appointed aſſeſſors of the ſaid duty for this preſent year, and at the ſame time to receive their charge, how and in what manner to make their aſſeſſments, and otherwiſe how to proceed in the execution of their ſaid office. And be you then there, to certify what you ſhall have done in the execution hereof. Herein fail you not. Given under my hand the —— day of —— in the year of our Lord ——*

John Bowneſs, *high conſtable.*

And this you the ſaid high conſtable are in nowiſe to omit, on the peril that ſhall enſue thereof. Given under our hands and ſeals the —— day of —— in the year of our Lord ——

B. Appointment of aſſeſſors of the land tax, with their charge.

Weſtmorland. BY *virtue of an act for granting an aid to his majeſty by a land tax, at four ſhillings in the pound, for the ſervice of this preſent year, We the commiſſioners of the ſaid duty for the county aforeſaid do hereby nominate and appoint —— to be aſſeſſors of the ſaid duty, within the townſhip of ——— in the county aforeſaid. And we do hereby require you the ſaid aſſeſſors, to make your aſſeſſment for the ſame, according to the proportions of the laſt aſſeſſment*

ment for the ſaid duty within your ſaid townſhip. And of your ſaid aſſeſſment you are to make out two duplicates in writing, and ſign the ſame with your names; and the ſame, together with the names of two or more able and ſufficient inhabitants to be collectors, you are to deliver unto us at ——— in ——— in the county aforeſaid, on —— the —— day of —— at the hour of ——— in the forenoon of the ſame day. And you are to give notice to the ſaid perſons to be by you returned for collectors, that they alſo do appear at the ſame time and place, to receive their appointment and charge. Given under our hands and ſeals, the ——— day of ——— in the year of our Lord ———

C. Appointment and charge of the collectors of the land tax, with warrant to collect.

Weſtmorland. *WE the commiſſioners of the land tax for the ſaid county, whoſe names are hereunto ſet, and ſeals affixed, do hereby nominate and appoint ——— to be collectors of the land tax for the townſhip of ——— in the ſaid county for this preſent year; and do hereby empower them to demand, collect, and receive the ſame. And you the ſaid collectors are hereby required, within ten days after your receipt hereof, to cauſe publick notice to be given in the church or chapel immediately after divine ſervice on the Lord's day, and to cauſe the like notice in writing to be affixed on the door of ſuch church or chapel, that all appeals againſt the aſſeſſment for the ſame, will be finally heard and determined by the ſaid commiſſioners, at —— in —— in the ſaid county, on the —— day of —— now next enſuing. And if after the time of ſuch determination, any perſon ſhall refuſe or neglect to pay the ſame upon demand, you are hereby required forthwith to give notice unto us thereof, that ſuch further proceedings may be had therein, as to the law doth appertain. And the ſame, when collected, you are hereby required to pay unto the receiver general or his deputy, at the times and places hereafter following; that is ſo ſay, —— deducting out of the laſt payment thereof 3 d for every pound by you collected, for your trouble in collecting and giving receipts. Given under our hands and ſeals, the ——— day of ——— in the year of our Lord ———*

D. Complaint to the commiſſioners on the land tax not paid.

Weſtmorland. A. C. *and* B. C. *collectors of the land tax for the diviſion of* ——— *in the ſaid county, complain to us two of the commiſſioners of the land tax for the ſaid county, that* A. O. *of* ——— *in the ſaid county, yeoman, refuſeth (after demand by the ſaid collectors duly made) to pay his rate or aſſeſſment to the land tax in the ſaid diviſion: And thereupon they pray that juſtice may be done.*

Before us
D. E.
F. G.

A. C.
B. C.

E. Summons thereupon.

Weſtmorland. { *To* A. O. *of* ——— *in the ſaid county, yeoman.*

WE *whoſe names are hereunto ſet and ſeals affixed, two of the commiſſioners of the land tax for the ſaid county for this preſent year, do hereby ſummon you perſonally to appear before us at the houſe of* ——— *in* ——— *in the ſaid county, on* —— *the* —— *day of* —— *at the hour of* —— *in the* —— *noon of the ſame day, to ſhew cauſe why you refuſe to pay your proportion of the rate or aſſeſſment towards the land tax within the diviſion of* ———*in the ſaid county. Given under our hands and ſeals the* ——— *day of* ——— *in the year of our Lord* ———

F. Diſtreſs.

Weſtmorland. { *To* A. C. *&* B. C. *collectors of the land tax for the diviſion of* —— *in the ſaid county.*

WHEREAS *in and by a rate and aſſeſſment made and ſigned according to the ſtatute in that caſe made,* A. O. *of* ——— *in the ſaid county, yeoman, is rated and aſſeſſed towards the land tax in the ſaid diviſion for this preſent year the ſum of* —— *And whereas it duly appears to us two of the commiſſioners of the land tax for the ſaid county, that the*

the ſaid ſum of —— hath been lawfully demanded of the ſaid A. O. *and that the ſaid* A. O. *hath refuſed and doth refuſe to pay the ſame; and whereas the ſaid* A. O. *having appeared before us in purſuance of our ſummons for that purpoſe, hath not ſhewed to us any ſufficient cauſe why the ſame ſhould not be paid:* [Or, *And whereas it hath been duly proved to us, that the ſaid* A. O. *hath been duly ſummoned to appear before us the ſaid commiſſioners, to ſhew cauſe why the ſame ſhould not be paid, but he the ſaid* A. O. *hath neglected to appear according to ſuch ſummons, and hath not ſhewed to us any ſufficient cauſe why the ſame ſhould not be paid:*] *Theſe are therefore to require you forthwith to make diſtreſs of the goods and chattels of him the ſaid* A. O. *and if within the ſpace of four days next after ſuch diſtreſs by you taken, the ſaid ſum, together with the charges of keeping the ſaid diſtreſs, ſhall not be paid, that then you do cauſe the ſaid diſtreſs to be appraiſed by two inhabitants or other ſufficient perſons, and to ſell the ſame, returning to him the ſaid* A. O. *the overplus, the charges of taking and keeping the ſaid diſtreſs being firſt deducted.*

G. Form of the duplicates to be tranſmitted to the receiver general, and into the exchequer.

Weſtmorland. A SCHEDULE, *containing the whole ſum aſſeſſed upon each pariſh or place, within the* Eaſt Ward *of the ſaid county, for and towards an aid granted to his majeſty by a land tax to be raiſed in* Great Britain, *for the ſervice of the year one thouſand ſeven hundred and ſeventy five, and alſo the chriſtian names and ſurnames of the reſpective aſſeſſors and collectors; made by us whoſe names are hereunto ſet and ſeals affixed, commiſſioners of the land tax for the ſaid county, this —— day of —— in the year aforeſaid.*

		l.	*s.*	*d.*
Orton ——		32	17	4
Aſſeſſors	A. B. C. D.			
Collectors	E. F. G. H.			
Raiſbeck ——		34	1	4
Aſſeſſors	I. K. L. M.			
Collectors	N. O. P. Q.			

(and ſo on.)

Larceny.

LARCENY comes from *latrocinium*, *latrociny*; and by contraction, or rather abuſe, *larceny*. 3 Inſt. 107.

I. Of grand larceny in general.
II. Of petit larceny.
III. Larceny from the perſon.
IV. Larceny from the houſe.
V. Larceny in a booth or tent.
VI. Larceny on a navigable river.
VII. Other larcenies.
VIII. Receiving ſtolen goods.
IX. Offering goods ſuſpected to be ſtolen, to be pawned or ſold.
X. Advertiſing or receiving a reward for helping to ſtolen goods.
XI. Charges of proſecution and conviction how to be paid.

I. Of grand larceny in general.

Grand larceny is *a felonious and fraudulent taking, and carrying away, by any perſon, of the mere perſonal goods of another, above the value of* 12*d.* 1 Haw. 89.

Felonious and fraudulent] Felony is always accompanied with an evil intention, and therefore ſhall not be imputed to a mere miſtake or miſanimadverſion; as where perſons break open a door, in order to execute a warrant, which will not juſtify ſuch a proceeding; for in ſuch caſe there is no felonious intention. 1 *Haw.* 65.

For it is the mind that makes the taking of another's goods to be felony, or a bare treſpaſs only; but becauſe the variety of circumſtances is ſo great, and the complications thereof ſo mingled, that it is impoſſible to preſcribe all the circumſtances evidencing a felonious intent, or the contrary; the ſame muſt be left to the due and attentive conſideration of the judge and jury, wherein the beſt rule is, in doubtful matters rather to incline to acquittal than conviction. Only in general it may be obſerved, that the ordinary diſcovery of a felonious intent is, if the party doth

it

it ſecretly, or being charged with the goods denies it. 1 *H. H.* 509.

But nevertheleſs, doing it openly and avowedly doth not excuſe from felony. So where a man came to *Smithfield* market to ſell a horſe, and a jockey coming thither to buy a horſe, the owner delivered his horſe to the jockey to ride up and down the market to try his paces, but inſtead of that, the jockey rode away with the horſe, this was adjudged felony. *Kel.* 82.

So where a perſon came into a ſempſtreſs's ſhop, and cheapened goods, and ran away with the goods out of the ſhop, openly, in her ſight, this was adjudged to be felony. *Raym.* 276.

So where a man comes into a houſe, by colour of a writ of execution, and carries away the goods; or ſues out a replevin to get another man's horſe, and then runs away with him; this is felony under colour of law. 2 *Ventr.* 94. *Kel.* 83.

Taking] All felony includes treſpaſs; and every indictment muſt have the words *feloniouſly took*, as well as *carried away:* from whence it follows, that if the party be guilty of no treſpaſs in taking the goods, he cannot be guilty of felony in carrying them away. 1 *Haw.* 89.

And from this ground it hath been holden, that one who finds the goods which I have loſt, and converts them to his own uſe, with intent to ſteal them, is no felon; and *a fortiori* therefore it muſt follow, that one who has the actual poſſeſſion of my goods by my delivery, for a ſpecial purpoſe, as a carrier who receives them, in order to carry them to a certain place: or a taylor who has them in order to make me a ſuit of clothes; or a friend who is entruſted with them to keep them for my uſe,—cannot be ſaid to ſteal them, by embezzling of them afterwards. 1 *Haw.* 89.

But yet it hath been reſolved, that if a carrier open a pack, and take out part of the goods; or a weaver, who has received ſilk to work, or a miller who has corn to grind, take out part thereof, with intent to ſteal it,—it is felony. 1 *Haw.* 90.

So where a man's goods are in ſuch a place, where ordinarily they are or may be lawfully placed, and a perſon takes them, with intent to ſteal them, it is felony; and the pretence of finding muſt not excuſe. 1 *H. H.* 506.

So if a man's horſe be going upon a common where he has a right to put him, and another take the horſe with intent to ſteal him, it is no finding, but a felony. 1 *H. H.* 506.

So

So alſo, if the horſe ſtray into a neighbour's ground or common, it is felony in him that ſo takes him. But if the owner of the ground takes him doing damage, or the lord ſeize him as a ſtray, though perchance he hath no title ſo to do, yet here is not a felonious intention, and therefore cannot be felony. 1 *H. H.* 506.

If one man's ſheep ſtray into another man's flock, and that other perſon drives it along with his flock, or by bare miſtake ſhears it, this taking is not a felony; but if he knew it to be another's, and marks it with his mark, this is an evidence of felony. 1 *H. H.* 507.

Lord *Hale* ſays, if one man take another man's hay or corn, and mingles it with his own heap or ſtock; or take another man's cloth, and embroider it with ſilk or gold; ſuch other perſon may retake the whole heap of corn, or cock of hay, or garment and embroidery alſo; and this retaking is no felony, nor ſo much as a treſpaſs. 1 *H. H.* 513.

It ſeems generally agreed, that one who has the bare charge, or the ſpecial uſe of goods, but not the poſſeſſion of them; as a ſhepherd who looks after my ſheep, or a butler who takes care of my plate, or a ſervant who keeps a key to my chamber, or a gueſt who has a piece of plate ſet before him in an inn may be guilty of felony in fraudulently taking away the ſame. 1 *Haw.* 90.

By the 21 *H.* 8. *c.* 7. Servants imbezilling their maſter's goods to the value of 40s or above (although this taking be no treſpaſs) ſhall be puniſhed as felons. But this ſhall not extend to any apprentice, nor to any perſon within 18 years of age.—And by the 12 *An. c.* 7. If it is taken out of an houſe, or outhouſe, it is felony without benefit of clergy.

Alſo by the 3 *W. c.* 9. If any perſon ſhall take away with intent to ſteal, or imbezil, any furniture out of his lodging, he ſhall be guilty of felony.

And carrying away] To make it come within this deſcription, it ſeemeth that any the leaſt removing of the thing taken from the place where it was before, is ſufficient for this purpoſe, though it be not quite carried off: And upon this ground, the gueſt, who having taken off the ſheets from his bed, with an intent to ſteal them, carried them into the hall, and was apprehended before he could get out of the houſe, was adjudged guilty of larceny: So alſo was he, who having taken an horſe in a cloſe, with an intent to ſteal him, was apprehended before he could get him out of the cloſe. 1 *Haw.* 93.

By

By any perſon] A wife may be guilty thereof, by ſtealing the goods of a ſtranger; but not by ſtealing the goods of her huſband. 1 *Haw.* 93.

It is ſaid by Mr. *Dalton* and others, that it is no felony for one reduced to extreme neceſſity, to take ſo much of another's victuals, as will ſave him from ſtarving; but lord *Hale* ſays, that this rule by the law of *England* is falſe; and therefore that if a perſon being under neceſſity for want of victuals or clothes, ſteals another man's goods, it is felony. 1 *H. H.* 54.

If one ſtealeth another man's goods, and afterwards another ſtealeth the ſame from him; the owner may charge the firſt or ſecond felon at his choice. *Dalt. c.* 162.

An alien, whoſe ſovereign is in amity with the crown of *England*, reſiding here, and receiving the protection of the law, oweth a local allegiance to the crown during the time of his reſidence, and if, during that time, he committeth an offence, he ſhall be liable to be puniſhed for the ſame, even as a natural born ſubject. For his perſon and perſonal eſtate are as much under the protection of the law, as the natural born ſubject's; and if he is injured in either, he hath the ſame remedy at law for ſuch injury. *Foſt.* 185.

So alſo, an alien whoſe ſovereign is at enmity with us, living here under the king's protection, committing offences, may be proceeded againſt in like manner; for he oweth a temporary local allegiance, founded on that ſhare of protection he receiveth. *id.*

So alſo a priſoner of war, although he is not properly ſubject to the municipal laws of this realm, yet if he commits any offence againſt the law of nations, or the light of nature and the fundamental laws of all ſociety, he is liable to anſwer in the ordinary courſe of juſtice, as other perſons offending in like manner are. As in the caſe of *Peter Molieres*, a French priſoner, who was indicted at the gaol delivery for the city of *Briſtol* in *Auguſt* 1758, before Sir *Michael Foſter*, for privately ſtealing in the ſhop of a goldſmith and jeweller, a diamond ring, valued at 20l. Sir *Michael* ſays, he thought it highly improper to proceed capitally upon a local ſtatute, againſt a priſoner of war; and therefore adviſed the jury to acquit him of the circumſtance of ſtealing in the ſhop as by the ſtatute, and to find him guilty of ſimple larceny to the value laid in the indictment. Accordingly, he was burnt in the hand, and ſent to the priſon appointed for French priſoners. *id.* 188.

Of

Of the mere perſonal goods] *Mere*; for if the perſonal goods ſavour any thing of the realty, it cannot be larceny. And therefore they ought to be no way annexed to the freehold; therefore it is no larceny, but a bare treſpaſs, to ſteal corn or graſs growing, or apples on a tree; but it is larceny to take them being ſevered from the freehold, as wood cut, graſs in cocks, ſtones digged out of the quarry; and this, whether they are ſevered by the owner, or even by the thief himſelf, if he ſever them at one time, and then come again at another time and take them. 1 *Haw.* 93. 1 *H. H.* 510.

But by the 4 *G.* 2. *c.* 32. Every perſon who ſhall ſteal, rip, cut, or break, with intent to ſteal, any lead, iron bar, iron gate, iron paliſadoe, or iron rail, fixed to any building, or in any garden, orchard, court yard, fence, or out-let belonging to any building; he, his aiders, and abettors, and alſo all who ſhall knowingly buy or receive the ſame, ſhall be guilty of felony, and be tranſported for ſeven years.

And by the 21 *G.* 3. *c.* 68. Every perſon who ſhall ſteal, rip, cut, break, or remove, with intent to ſteal, any copper, braſs, bell-metal, utenſil, or fixture, being fixed to any building, or in any garden, orchard, court yard, fence, or outlet belonging to any building; or any iron rails or fencing ſet up or fixed in any ſquare, court, or other place; he, his aiders and abettors, and alſo all who ſhall knowingly buy or receive the ſame, ſhall be guilty of felony, and tranſported for ſeven years, or detained in priſon and kept to hard labour, not exceeding three years nor leſs than one, and within that time, if the court ſhall think fit, ſhall be once or oftener, but not more than thrice, publicly whipped.

Alſo the goods ought to have ſome worth in themſelves, and not to derive their whole value from the relation they bear to ſome other thing, which cannot be ſtolen; as paper or parchment, on which are written aſſurances concerning lands, or obligations, or covenants, or other ſecurities for a debt, or other *choſe* in action. 1 *Haw.* 93.

But by the 8 *H.* 6. *c.* 12. If any perſon ſhall ſteal any record or proceſs belonging to any of the courts at *Weſtminſter*, by reaſon whereof any judgment ſhall be reverſed, he ſhall be guilty of felony.

And by the 2 *G.* 2. *c.* 25. If any perſon ſhall ſteal, or take by robbery, any exchequer order or tallies, or other orders, intitling any other perſon to an annuity or ſhare in any parliamentary fund; or any exchequer bills; bank notes; *South Sea* bonds; *Eaſt India* bonds; dividend warrants

rants of the bank, *South Sea* company, *East India* company, or any other company; bills of exchange; navy bills or debentures; goldſmiths notes for payment of money; or other bonds or warrants, bills, or promiſſory notes for payment of money; he ſhall be guilty of felony, with or without the benefit of clergy, in the ſame manner as he would have been, if he had ſtolen or taken by robbery any other goods of the like value with the money due thereon: But not to work corruption of blood.

The goods ought alſo not to be things of a baſe nature, as dogs, cats, bears, foxes, monkeys, ferrets, and the like; which, howſoever they may be valued by the owner, ſhall never be ſo highly regarded by the law, that for their ſakes a man ſhall die: But yet the ſtealing of an hawk, knowing it to be reclaimed, is felony by the common law and by ſtatute, in reſpect of that very high value which was formerly ſet upon that bird. 1 *Haw.* 93.

Of another] It ſeems agreed, that the taking of goods, whereof no one had a property at the time, cannot be felony; and therefore that he who takes any treaſure trove, or a wreck, waif, or ſtray, before they have been ſeized by the perſons who have a right thereto, is not guilty of felony, but ſhall be puniſhed by fine. 1 *Haw.* 94.

But yet the taking of theſe muſt be, where the party that takes them, really believes them to be ſuch, and colours not a felonious taking under ſuch a pretence; for then every felon would cover his felony under that pretence. 1 *H. H.* 506.

Neither ſhall he who takes fiſh in a river or other great water, wherein they are at their natural liberty, be guilty of felony; as he may be, who takes them out of a trunk or pond. 1 *Haw.* 94.

Upon the like ground it ſeems clear, that a man cannot commit felony, by taking hares or conies in a warren, or old pigeons being out of the houſe; but it is agreed, that one may commit larceny, in taking ſuch or any other creatures *feræ naturæ*, if they be fit for food, and reduced to tameneſs, and known by him to be ſo. 1 *Haw.* 94.

Alſo it is ſaid, that there may be felony in taking goods, the owner whereof is unknown; in which caſe, the king ſhall have the goods, and the offender ſhall be indicted for taking the goods of a perſon unknown; and it ſeems, that in ſome caſes the law will rather feign a property, where in ſtrictneſs there is none, than ſuffer an offender to eſcape. 1 *Haw.* 94.

He.

He who ſteals goods belonging to a pariſh church, may be indicted for ſtealing the goods of the pariſhioners. 1 *Haw.* 94.

And it hath been adjudged, that he who takes off a ſhroud from a dead corps, may be indicted as having ſtolen it from him, who was the owner thereof when it was put on; for a dead man can have no property. 1 *Haw.* 94.

Above the value of 12 d] The learned editor of *Hale*'s hiſtory of the pleas of the crown obſerves, that in former times, though the puniſhment of theft was capital, yet the criminal was permitted to redeem his life by a pecuniary ranſom; but in the 9 *H.* 1. it was enacted, that whoever was convicted of theft ſhould be hanged, and the liberty of redemption was entirely taken away; which law continues to this day. But conſidering the alteration in the value of money, the ſeverity of it is much greater now than it was then; for 12 d would then purchaſe as much as 40 s will now: And yet a theft above the value of 12 d is ſtill liable to the ſame puniſhment. Upon which Sir *H. Spelman* juſtly obſerves, that while all things elſe have riſen in their value, and grown dearer, the life of man is become much cheaper; and from hence takes occaſion to wiſh, that the ancient tenderneſs of life were again reſtored. 1 *H. H.* 12.

And lord *Coke*, obſerving that when the ſtatute of the 3 *Ed.* 1. was made, which makes ſtealing of goods above the value of 12 d to be grand larceny, the ounce of ſilver was at the value of 20 d, and now it is of the value of 5 s and above, draws this concluſion, that the thing ſtolen ought to be reaſonably valued, that is, having reſpect to the great alteration in the value of money. 2 *Inſt.* 189, 190. For 20 s were then a real *pound* weight; which name we ſtill retain, altho' the weight is much diminiſhed.

If two perſons or more, together, ſteal goods above the value of 12 d, every one of them is guilty of grand larceny; for each perſon is as much an offender as if he had been alone. 1 *Haw.* 95.

Alſo it ſeems the current opinion of all the old books, that if one at ſeveral times ſteal ſeveral parcels of goods, each under the value of 12 d, but amounting in the whole to more, from the ſame perſon, and be found guilty thereof on the ſame indictment, he ſhall have judgment of death as for grand larceny; but this ſeverity is ſeldom practiſed. 1 *Haw.* 95.

II. Of petit larceny.

Petit larceny agrees with grand larceny in the ſeveral particulars above mentioned, except only the value of the goods (and except as hereafter followeth); ſo that wherever an offence would amount to grand larceny, if the thing ſtolen were above the value of 12d; it is petit larceny, if it be but of that value or under. 1 *Haw.* 95.

And if one be indicted for ſtealing goods to the value of 10s, and the jury find ſpecially, as they may, that he is guilty, but that the goods are worth but 10d; he ſhall not have judgment of death, but only as for petit larceny. 1 *Haw.* 95.

In petit larceny there can be no acceſſaries, neither before nor after. 1 *H. H.* 530.

By the 3 *Ed.* 1. *c.* 15. Perſons indicted of petit larceny, if they were not guilty of ſome other larceny aforetime, are bailable by juſtices of the peace. And it ſeems to be agreed, that there is no neceſſity, that ſuch perſon be of good reputation: But yet if the crime be open and manifeſt, it ſeems that they ought not to be bailed; but if there be any colour of probability for their innocence, it ſeems moſt agreeable to the intention of the ſtatute to bail them. 2 *Haw.* 101.

For a juſtice of the peace, before whom an offender ſhall be brought for petit larceny out of ſeſſions, may not puniſh the ſaid offender by his diſcretion, and ſo let him go; but muſt have him committed or bailed, to the intent he may come to his trial, as in caſes of other felonies: And if upon his trial, the jury ſhall find the goods ſtolen to exceed 12d in value, the offender ſhall have judgment to die for the fault. *Dalt. c.* 154.

It ſeemeth, that all petit larceny is felony, and conſequently requires the word *feloniouſly* in an indictment for it; yet it is certain, that it is not puniſhable with the loſs of life or lands, but only with the forfeiture of goods, and whipping, tranſportation, or other corporal puniſhment. 1 *Haw.* 95.

III. Larceny from the perſon.

If the goods are taken from a man's perſon, the offence receives a farther degree of guilt; and if it is attended with putting him in fear, it is called *robbery*; for which ſee that title.

If it is without putting him in fear, then it is called barely *larceny from the perſon.* 1 *Haw.* 95.

If

If it is done privily without his knowledge, by picking of pockets, or otherwiſe, it is excluded from the benefit of clergy by the 8 *El. c.* 4. (That is, if the thing ſtolen be above the value of 12*d.* 2 *H. H.* 366.) But this ſtatute extendeth not to acceſſaries, either before or after. 2 *Haw.* 350.

If it is done openly and avowedly before his face, it is within the benefit of clergy, (1 *Haw.* 97.) except where it is committed in a dwelling-houſe, or outhouſe thereunto belonging, to the value of 40s, from which the benefit of clergy is taken away, by the 12 *An. ſt.* 1. *c.* 7. hereafter following.

IV. Larceny from the houſe.

This muſt be underſtood where the offence falls ſhort of *burglary*.

Robbing a dwelling houſe, ſome perſon being therein.

1. By the 3 *W. c.* 9. Every perſon that ſhall feloniouſly take away any goods, being in any dwelling houſe, any perſon being therein, and put in fear; or ſhall rob any dwelling houſe in the day time, any perſon being therein; he, his comforters and abettors, ſhall be guilty of felony without benefit of clergy.

Robbing an houſe to the value of 5s, no perſon being therein.

2. And by the 39 *El. c.* 15. Every perſon who ſhall be convicted of the feloniouſly taking away in the day-time any money or goods of the value of 5s, in any dwelling houſe, or outhouſe thereunto belonging, and uſed to and with the ſame, altho' no perſon be therein, ſhall be guilty of felony without benefit of clergy.

This requires an actual breaking, and not entring by the doors being open. 1 *H. H.* 548.

Stealing out of an houſe to the value of 40s, no perſon being therein, and the ſame not broken open.

3. And by the 12 *Ann. ſt.* 1. *c.* 7. Every perſon that ſhall feloniouſly ſteal any money, goods, or merchandizes, to the value of 40s, being in any dwelling-houſe, or outhouſe thereunto belonging, altho' it be not broken open, nor any perſon be therein, ſhall be guilty of felony without benefit of clergy.

Breaking a houſe in the day time, any perſon being therein, and put in fear.

4. And by the 1 *Ed.* 6. *c.* 12. *ſ.* 10. Every perſon who ſhall be convicted of breaking any houſe in the day-time, any perſon being therein, and put in fear, ſhall be guilty of felony without benefit of clergy.

And this altho' nothing be actually taken: But it requires not only an actual breaking, and putting in fear, but alſo an entry *with an intent to commit* felony, and ſo to be laid in the indictment. 1 *H. H.* 548.

Shoplifting to the value of 5s.

5. By the 10 & 11 *W. c.* 23. Every perſon that ſhall by night or by day, in any ſhop, warehouſe, coach-houſe, or

or ſtable, privately and ſeloniouſly ſteal any goods, wares, or merchandizes, to the value of 5s, although it be not broken open, nor any perſon be therein, ſhall be guilty of felony without benefit of clergy.

Warehouſe] In the caſe of *John Howard* at the *Old Bailey*, *July* 3, 1751. He was indicted on this ſtatute, for privately ſtealing goods, the property of Meſſieurs *Fludyer* and company, in the warehouſe of *John Day*: There was another count in the indictment, charging that the priſoner ſtole the goods of *John Day* in his warehouſe. The caſe upon evidence appeared to be, that *John Day* kept a common warehouſe by the water ſide, where merchants did uſually lodge goods intended for exportation, till they could have an opportunity of putting them on board. The goods in the indictment were ſent by *Fludyer* and company to this warehouſe, in order to be put on board a veſſel for exportation, and were ſtolen by the priſoner in this warehouſe. The court was of opinion, that this is not a caſe within the ſtatute. For by the word *warehouſe* in the ſtatute is meant, not a mere repoſitory for goods, but ſuch places where merchants and other traders keep their goods for ſale, in the nature of ſhops, and whither cuſtomers go to view them. And though the goods in this caſe might with propriety enough be charged to be the goods of *John Day*, ſince he had the charge and poſſeſſion of them, which made him anſwerable to his principals for them; yet ſtill the ſame objection recurreth, his warehouſe was not a place for ſale, but merely ſafe cuſtody. Accordingly the larceny being fully proved, the priſoner was by the direction of the court found guilty of larceny, to the value laid in the indictment, and acquitted of ſtealing privately in the warehouſe.——It has been generally held, that the meaning of this act, with regard to *ſhoplifting*, is, that the goods muſt be ſuch as are uſually expoſed to ſale in the *ſhop*, and not any other valuable thing which may happen to be put there. And it ſeemeth that the ſame equitable conſtruction ſhould take place with regard to *warehouſes*. The goods ſhould be ſuch as are uſually expoſed to ſale in ſuch places. And tho' *coach-houſes* and *ſtables*, which are likewiſe named in the act, are not places for ſale, yet ſtill in the conſtruction of ſo penal a law, it will not be amiſs to carry the ſame equity as far as may be with regard to them. The goods ſhould be ſuch as are uſually lodged in thoſe places, *Foſt.* 77.

Privately] If it ſhall appear on the evidence, as it often doth, that thoſe places were *broke open* at the time of the larceny, the caſe (as it ſeemeth) will not come within the act. For the words are,——if any perſon ſhall *privately* ſteal,——which ſeemeth to exclude all caſes, where any degree of force is uſed to come at the goods. *id.* 79.

Any goods, wares, or merchandize] In which words *money* is not included. For altho' the word *goods* may in a large ſenſe take in money, and often doth, yet being connected with *wares and merchandizes*, the ſafer conſtruction of ſo penal a ſtatute will be, to confine it to goods of like kind, goods expoſed to ſale. *id.*

In like manner, it was ruled, upon the ſame principle at *Maidſtone* Lent aſſizes 1752, in the caſe of *George Grimes*, indicted on the ſtatute, 24 *G.* 2. *c.* 45. for ſtealing a conſiderable ſum of money out of a ſhip in port: Tho' great part of it conſiſted in *Portugal* money, not made current by proclamation, but commonly current. *id.*

But *horſes* ſeem clearly to be included under the word *goods*, by reaſon of the mentioning *coach-houſes* and ſtables before; and *horſe ſtealers* are ſpecified in the ſubſequent parts of the act.

Reward for convicting an offender; Exemption from pariſh offices.

6. Every perſon who ſhall apprehend any one guilty of breaking open houſes in a felonious manner; or of privately and feloniouſly ſtealing goods, wares, or merchandizes, of the value of 5s, in any ſhop, warehouſe, coach-houſe, or ſtable, tho' they be not broken open, and although no perſon be therein to be put in fear, and ſhall proſecute him to conviction, ſhall have a certificate without fee, under the hand of the judge, certifying ſuch conviction, and within what pariſh or place the felony was committed, and alſo that ſuch felon was diſcovered and taken, or diſcovered or taken, by the perſon ſo diſcovering or apprehending; and if any diſpute ariſe between ſeveral perſons ſo diſcovering or apprehending, the judge ſhall appoint the certificate into ſo many ſhares to be divided among the perſons concerned as to him ſhall ſeem juſt and reaſonable:

And if any perſon ſhall happen to be ſlain by any ſuch houſebreaker, or other felon as aforeſaid, in endeavouring to apprehend him, the executors or adminiſtrators of ſuch perſon ſlain, ſhall have the like certificate:

Which certificate ſhall be inrolled by the clerk of the peace of the county in which it ſhall be granted, for which he ſhall have 1s.

And

And the ſaid certificate may be once aſſigned over, and no more.

And the original proprietor, or the aſſignee of the ſame, ſhall by virtue thereof be diſcharged from all manner of pariſh and ward offices, within the pariſh or ward where the felony was committed.

But the certificate ſhall not be aſſignable, after it has been once made uſe of to exempt any perſon from ſuch office. 10 & 11 *W.* c. 23.

From all manner of pariſh and ward offices] *E.* 29 *G.* 2. *K.* and *Davis.* Motion to quaſh a conviction and the affirmance of it on appeal, removed into the king's bench by certiorari; upon this caſe:——The defendant, being aſſignee of a certificate under this act, was appointed by the truſtees under an act of the 22 *G.* 2. to be collector of the pariſh rates for repair of the roads within the pariſh of St. Leonard's Shoreditch; and refuſing to take the office upon him, inſiſting that he was exempted by the benefit of his certificate, he was convicted before a juſtice; and this conviction being affirmed upon appeal to the ſeſſions, it was now moved to quaſh theſe proceedings as illegal. After argument on ſhewing cauſe:——By *Ryder* Ch. J. The queſtion is, Whether the defendant has a right to be exempted from this office by virtue of his certificate? The act exempts the party, and his aſſignee, from all pariſh and ward offices. Here are two queſtions: Firſt, whether this is a pariſh office; ſecondly, whether it is within this act; and tho' the latter may ſeem to be a conſequence of the former, yet it may be neceſſary to conſider, whether this is the old office of ſurveyor, or a new office. It is not neceſſary for a pariſh officer to be choſen by the pariſhioners. A pariſh office muſt be exerciſed about pariſh buſineſs; and the officer muſt be a pariſhioner: Both which ingredients are here. It may be a queſtion of nicety, whether this act extends to new offices; tho' I give no opinion as to this point. The office is not co-extenſive with that of ſurveyor; but yet it ſeems part of that old office. It cannot be preſumed, that the 22 *G.* 2. meant to take away any privilege which the party had before. Therefore as I do not think this is a new office, I think the conviction and affirmance thereof ought to be quaſhed; without giving any opinion, whether the exemption will extend to a new office, which did not exiſt at the time of the 10 & 11 *W.*—*Denniſon* J. The queſtion is, Whether the collector of the pariſh rates in the pariſh, within the

22 *G.* 2. is a parish officer within the benefit of the certificate under the 10 & 11 *W.* I think the act of 10 & 11 *W.* ought to have a liberal construction. The office of surveyor is partly to be executed by this collector. And it is in fact an old office, divided by an act of parliament, and to be executed by two persons. And the collector is certainly as much a parish officer, as the surveyor appointed under this act of parliament. A covenant to pay taxes, extends to subsequent taxes of the same kind. So a privilege of persons from offices. The act does not confine it to offices in being. It was intended as a reward. Therefore the new modelling an old office, shall have the same benefit and construction, as the old office itself would be intitled to.——*Foster* J. This must certainly be taken to be a parish office. For the duty is confined to the parish, and to be executed by an inhabitant. I do not take it to be a new office; for it is part at least of the old one. I will go a little further, and suppose it an entirely new created office; and yet if a parish office, I should think it within the 10 & 11 *W.* Clergymen, at common law are exempted from all offices; and therefore would be exempted from the new offices. So an attorney's privilege extends to all matters of like nature. So dissenting ministers, being exempted from all offices by the toleration act, are exempt from new offices, as well as old ones.——*Wilmot* J. The words of the act of 10 & 11 *W.* are as general as can be. Nothing can more contribute to the public safety than apprehending felons, which is the object of the act. It is not necessary to give an opinion; but I take it, if this had been a new office, it would have been within the exemption. This office has every badge of a parish office. It must be exercised by a parishioner; within the parish; the rates are to be applied to a parochial purpose; and I think it not necessary that a parish officer should be appointed by the parish, as the constable is a parish officer, tho' not named by the parish. Nothing can be clearer, than that this is part of the old office of surveyor.——Therefore the conviction, and affirmance thereof, were quashed. M. S.

40 l reward for convicting.

7. And moreover, as a further reward, every person who shall apprehend any person guilty of the felonious breaking and entering of any house in the day time, and prosecute him to conviction, shall have a certificate under the hand of the judge, without fee, to be made out and delivered before the end of the assizes, certifying the conviction, and in what parish the said felony was committed, and also that such felon was taken by the person claiming

claiming the reward; and if any diſpute ſhall happen to ariſe between the perſons claiming, the judge ſhall by the ſaid certificate appoint the ſame to be paid amongſt the parties claiming the ſame, in ſuch ſhares and proportions as to him ſhall ſeem juſt and reaſonable.

And on tender of ſuch certificate to the ſheriff, and demand made, he ſhall pay to the perſon ſo intitled the ſum of 40l without fee, within one month after ſuch tender and demand; on pain of forfeiting double, with treble coſts. 5 *An. c.* 31.

8. And if any watchman or any other perſon be killed in endeavouring to apprehend any ſuch houſebreaker, his executors or adminiſtrators ſhall have a certificate delivered under the hand and ſeal of the judge, or of the two next juſtices, of ſuch perſon being ſo killed; which certificate they ſhall, upon ſufficient proof before them made, give without fee: Whereupon ſuch executor or adminiſtrator ſhall be intitled to receive the like ſum of 40l in like manner. 5 *An. c.* 31. *ſ.* 2. 40l to the executors of a perſon killed.

9. And moreover, if any perſon being out of priſon, ſhall commit any ſuch houſebreaking in the day time as aforeſaid, and afterwards diſcover two or more the like offenders, ſo as two or more be convicted, he ſhall have the like reward and allowance of 40l, and alſo all other advantages which are given to perſons who ſhall apprehend and convict any the like offenders; and ſhall alſo have the king's pardon for all burglaries, robberies, and felonies (except murder and treaſon) by him committed before ſuch diſcovery made; which pardon ſhall be likewiſe a good bar to an appeal. 5 *An. c.* 31. *ſ.* 4. 40l and a pardon for convicting accomplices.

10. And the ſheriff on producing the certificates, and receipts for the ſaid rewards, may deduct the ſame on his accounts; and if he have not money in his hands, he ſhall be repaid out of the treaſury, on certificate from the clerk of the pipe. 5 *An. c.* 31. *ſ.* 3. Sheriff to be repaid out of the treaſury.

Or inſtead of charging the ſame in his accounts, he may immediately apply to the commiſſioners of the treaſury, who ſhall forthwith repay the ſame without fee. 3 *G. c.* 15. *ſ.* 4.

V. Larceny in a booth or tent.

Perſons found guilty of robbing any perſon in any booth or tent, in any fair or market, the owner, his wife, children, or ſervants being within, whether they be ſleeping or waking, ſhall ſuffer as felons without benefit of clergy. 5 & 6 *Ed.* 6. *c.* 9. *ſ.* 5.

VI. Larceny on a navigable river.

By the 24 *G.* 2. *c* 45. All perſons who ſhall felonioufly ſteal any goods or merchandize of the value of 40s, in any ſhip, barge, lighter, boat or other veſſel or craft, upon any navigable river or in any port of entry or diſcharge, or in any creek belonging thereto, or from off any wharf or key adjacent to any navigable river, port of entry or diſcharge, or ſhall be preſent or aſſiſting therein, ſhall be guilty of felony without benefit of clergy.

And by the 2 *G.* 3. *c.* 28. Perſons navigating bum boats on the river *Thames*, for the purpoſe of ſelling liquors, ſlops, tobacco, fruit, greens, gingerbread, or other ſuch like ware, except ſuch boats as ſhall be entred at *Trinity Houſe*; and perſons taking in exchange, or by way of barter, or unlawfully receiving any ropes, cordage, tackle, goods, ſtores, or merchandize of any veſſels in the river; or cutting, damaging, and ſpoiling any cordage, cable, buoys, buoy rope, headfaſt, or other faſt or rope belonging to any ſhip in the river, with intent to ſteal the ſame; ſhall be puniſhed as in the ſaid act is directed: which act being ſomewhat long, and only local, it is thought fit to refer to the act itſelf for a more particular deſcription of the offences, and for the manner of conviction and puniſhment.

VII. Other larcenies.

There are moreover divers other larcenies, which are not here ſpecified, the ſame being inſerted under the ſeveral titles in this book, to which they do more properly belong, That is to ſay,

Larceny in ſtealing woollen cloth off the tenters in the night time, is inſerted under the title **Woollen Manufacture.**

Larceny in ſtealing linen, fuſtian, callico, or cotton cloth, yarn, or goods laid to be printed, bleached, or dried, to the value of 10s; under the title **Linen cloth.**

Larceny in ſtealing cattle or ſheep (with a reward of 10l for convicting an offender), under the titles **Cattle** and **Sheep.**

Larceny in ſtealing deer in parks, conies or hares in warrens, or fiſh in ponds, under title **Game.**

Larceny in ſtealing hawks or ſwans, alſo under title **Game.**

VIII.

VIII. Receiving ſtolen goods.

1. By the 3 *W.* *c.* 9 If any perſon ſhall buy or receive any ſtolen goods, knowing the ſame to be ſtolen; he ſhall be deemed an acceſſary after the fact, and ſuffer accordingly. *ſ.* 4.

2. By the 5 *An.* *c.* 31. If any perſon ſhall buy or receive any ſtolen goods, knowing them to be ſtolen, or ſhall receive, harbour, or conceal any felons or thieves, knowing them to be ſo, he ſhall be deemed acceſſary to the felony, and being convicted on the teſtimony of one witneſs, ſhall ſuffer death as a felon convict. (But within clergy.) *ſ.* 5.

3. And by the 4 *G.* *c.* 11. Perſons convicted of receiving or buying ſtolen goods knowing them to be ſtolen, may be tranſported for 14 years. *ſ.* 1.

In the caſe of *K.* and *Davidſon*, at *Carliſle* aſſizes 1766, *Margaret Davidſon* was indicted for ſtealing bags containing 160*l* in money out of a dwelling houſe, and *Iſabel* and *Margaret Carter* were indicted in one count for receiving the money knowing it to have been ſtolen, and in a ſecond count for harbouring and concealing *Margaret Davidſon* knowing her to have been guilty of that felony; and an objection being made that *money* is not within the acts of parliament relating to receivers of *ſtolen goods*, the judge (Mr. Juſtice *Bathurſt*) was clearly of that opinion, and that the counſel for the proſecutor ſhould therefore apply their evidence only to the charge of harbouring and concealing the felon. They were all convicted, and the principal received judgment of death, and the acceſſaries had their clergy, and were burned in the hand.

In the caſe of *Abraham Evans*, at the ſeſſions at the *Old Bailey* in *May* 1749, *John Avery* and *Abraham Evans* were indicted, *Avery* for privately ſtealing from the perſon of Sir *Giles Payne*, one ſilk handkerchief, value 12*d*; and *Evans* for felonioufly receiving the ſame, knowing it to be ſtolen. *Avery* was found guilty to the value of 10*d*, and was ordered to be tranſported for ſeven years. *Evans* was likewiſe convicted of receiving the goods knowing them to be ſtolen; but judgment was reſpited as to him, upon a doubt whether ſentence for tranſportation for 14 years can be given againſt him upon the ſtatute of the 4 *G.* in regard the principal felon is found guilty of petty larceny only. And at a meeting of the judges to conſider of this doubt, they were all of opinion that no judgment can be given againſt *Evans* on this verdict. For tho' the

act is expreſs, that perſons convicted of buying or receiving ſtolen goods, knowing them to be ſtolen, ſhall be tranſported for 14 years, yet ſtill it muſt mean perſons *legally* convicted, perſons convicted as acceſſaries after the fact under the ſtatutes of the 3 *W.* and 5 *An.* But this man ought to have been acquitted, the principal felon being convicted of petty larceny only. And indeed the indictment againſt *Avery* being for petty larceny, *Evans* ought not to have been put upon his trial. For the acts which make receivers of ſtolen goods knowingly, acceſſaries to the felony, muſt be underſtood to make them acceſſaries in ſuch caſes only, where by law an acceſſary may be; and there can be no acceſſary to petty larceny. Accordingly, at the next ſeſſions, *Evans* was diſcharged. *Foſt.* 74.

4. And notwithſtanding that regularly the acceſſary cannot be tried, till the principal be convicted, yet by the 5 *An. c.* 31. it is enacted, that if the principal felon cannot be taken, ſo as to be proſecuted and convicted, yet nevertheleſs the buyer and receiver of ſtolen goods may be proſecuted as for a miſdemeanor, and puniſhed by fine and impriſonment, or other ſuch corporal puniſhment as the court ſhall think fit; which ſhall exempt him from being puniſhed as acceſſary, if the principal ſhall be afterwards taken and convicted. *ſ.* 6.

In the caſe of *K.* and *Wild*, there was an indictment for a miſdemeanor, in receiving ſtolen goods knowing them to be ſtolen. Upon the proſecutor's evidence it appeared that the felons had been convicted and executed. Whereupon it was objected that this indictment would not lie, being only given in caſe where the felon cannot be taken, this being only a juriſdiction given under thoſe particular circumſtances. And of that opinion was the chief juſtice, and the defendant was acquitted. *Strange.* 57. (8vo edit.)

5. By the 29 *G.* 2. *c.* 30. Whereas the pernicious practice of ſtealing *lead*, *iron*, *copper*, *braſs*, *bell-metal*, and *ſolder*, fixed to, or lying or being in or upon houſes, out-houſes, mills, warehouſes, workſhops, and other buildings, areas, vaults, yards, gardens, orchards, or other places: and alſo the ſtealing of ſuch materials from ſhips, boats, and other veſſels, and from off wharfs, keys, and other places, is become a great evil, by reaſon of the difficulty in apprehending and convicting the thieves, and in diſcovering the buyers and receivers; it is therefore enacted, that every perſon who ſhall buy or receive any of the ſame, knowing the ſame to be ſtolen or unlawfully come by, or ſhall privately

privately buy or receive any ſtolen lead, iron, copper, braſs, bell-metal, or ſolder, by ſuffering any door, window, or ſhutter to be left open or unfaſtened, between ſun-ſetting and ſun-riſing, for that purpoſe; or ſhall buy or receive any of the ſame at any time in any clandeſtine manner; ſhall, on conviction by due courſe of law, altho' the principal felon hath not been convicted, be tranſported for 14 years. *ſ.* 1.

And one juſtice on complaint on oath by any credible perſon, that there is cauſe to ſuſpect that ſtolen lead, iron, copper, braſs, bell metal, or ſolder, is concealed in any dwelling houſe, outhouſe, yard, garden, or other place, may by his warrant cauſe ſuch place to be ſearched in the day time; and if any of the ſame, ſuſpected to be ſtolen, ſhall be found therein, may cauſe the ſame, and the perſon in whoſe houſe or other place the ſame ſhall be found, to be brought before two juſtices: And if ſuch perſon ſhall not give an account, to the ſatisfaction of ſuch juſtices, how he came by the ſame, or ſhall not in ſome convenient time to be ſet by the ſaid juſtices produce the party of whom he bought or received the ſame, he ſhall be adjudged guilty of a miſdemeanor *ſ.* 2.

And every conſtable within his conſtablewick, beadle within his diſtrict, and watchman whilſt he is upon duty, ſhall apprehend or cauſe to be apprehended every perſon who may reaſonably be ſuſpected of having, carrying, or conveying, after ſun-ſetting and before ſun-riſing, any of the ſaid materials, ſuſpected to be ſtolen or unlawfully come by; and the ſame, together with ſuch perſon, as ſoon as conveniently may be, ſhall carry before two juſtices: And if the perſon ſo apprehended conveying the ſame, ſhall not produce the perſon from whom he bought or received the ſame, or ſome other credible witneſs to depoſe upon oath the ſale or delivery thereof, or ſhall not give an account, to the ſatisfaction of ſuch juſtices, how he came by the ſame, he ſhall be adjudged guilty of a miſdemeanor. *ſ.* 3.

In either of which caſes, two juſtices may cauſe the ſaid materials to be depoſited with the churchwardens or overſeers of the poor where the ſame were found, or in any other convenient place, for any time not exceeding 30 days, and in the mean time may order the ſaid churchwardens or overſeers, or one of them, in every pariſh within the bills of mortality, to inſert an advertiſement in ſome publick paper; and elſewhere cauſe notice to be given by ſome publick crier, and by fixing on the church or chapel door notice deſcribing ſuch materials, and where depoſited:

poſited: And if any perſon can prove his property thereto, upon oath, to the ſatisfaction of ſuch two juſtices, they ſhall order reſtitution thereof to the owner, after paying reaſonable charges of removing, depoſiting, and giving publick notice of the ſame. And if at the end of the 30 days, no perſon ſhall prove his property thereto, the ſame ſhall be ſold for the beſt price that can reaſonably be had; and after deducting the charges as aforeſaid, half of the money ariſing from ſuch ſale ſhall be given to the perſon apprehending, and half to the poor of the pariſh where the offence ſhall be committed (if it is known where), or elſe where the conviction ſhall be. *ſ.* 4.

And every perſon to whom any of the ſame ſhall be brought and offered to be ſold, pawned, or delivered (there being reaſonable cauſe to ſuſpect that the ſame was ſtolen or unlawfully come by) ſhall apprehend, ſecure, and carry before a juſtice (having it in his power ſo to do) the perſon ſo bringing or offering the ſame, together with the ſaid materials; and ſuch perſon ſhall be dealt with, and the ſaid materials ſhall be depoſited and diſpoſed of, as if he had been apprehended by the conſtable, beadle, or watchman: And if it ſhall appear upon the oath of any perſon, notwithſtanding he was concerned in ſtealing the ſame, if corroborated with other credible circumſtances, to the ſatisfaction of two juſtices, that there was reaſonable cauſe to ſuſpect that the ſame was ſtolen or unlawfully come by, and that the perſon to whom the ſame was brought or offered did not (having it in his power ſo to do) apprehend, ſecure, and carry before a juſtice the perſon who brought or offered the ſame; then the perſon to whom the ſame was brought or offered, ſhall be adjudged guilty of a miſdemeanor. *ſ.* 5.

And perſons for the two former miſdemeanors, in having or carrying any of the ſaid goods, ſhall forfeit for the firſt offence 40 s, for the ſecond 4 l, and for every ſubſequent offence 6 l; and for the other miſdemeanor, in not carrying a ſuſpected perſon before a juſtice, ſhall forfeit for the firſt offence 20 s, for the ſecond 40 s, and for every ſubſequent offence 4 l; by diſtreſs: half to the informer, and half to the overſeers for the uſe of the poor where the offence was committed (if known), or otherwiſe where the conviction ſhall be. And if no ſufficient diſtreſs ſhall be found, then to be committed to the common gaol or other priſon or houſe of correction for one month for the firſt offence, for the ſecond two months, and for every ſubſequent offence till diſcharged by order of ſeſſions. *ſ.* 6.

The

The conviction to be on parchment, and to be certified to the next ſeſſions, and there filed; in the form or to the effect following, *viz.*

Middleſex, to wit. BE *it remembred, that on the* ——— *day of* ——— *in the year* ——— A. O. *was convicted before us* ——— *of the juſtices of the peace for* ——— *of a miſdemeanor, in having in his poſſeſſion lead, iron, copper, braſs, bell-metal, or ſolder, ſuſpected to be ſtolen or unlawfully come by, and not producing the party or parties of whom he bought or received the ſame, nor giving a ſatisfactory account how he came by the ſame* [or, *in having, carrying, or conveying of lead, iron, copper, braſs, bell-metal, or ſolder, ſuſpected to be ſtolen or unlawfully come by, and not producing the party or parties from whom he bought or received the ſame, nor any credible witneſs to depoſe upon oath the ſale or delivery thereof, and not giving a ſatisfactory account how he came by the ſame*; or, *of neglecting to apprehend and ſecure the perſon who brought and offered to pawn, ſell, or deliver lead, iron, copper, braſs, bell-metal, or ſolder, ſuſpected to be ſtolen or unlawfully come by*; as the caſe ſhall be:] *Given under our hands and ſeals the day and year aforeſaid.*

Which conviction ſhall not be liable to be removed by certiorari, but ſhall be final to all intents and purpoſes. *ſ.* 7.

And if any perſon being out of priſon, ſhall commit any felony by ſtealing any of the ſaid materials, and afterwards diſcover two or more perſons who ſhall buy or receive any of the ſame, knowing the ſame to be ſtolen, ſo as two or more be convicted, he ſhall have a pardon, which ſhall alſo be a bar to an appeal. *ſ.* 8.

And if any perſon ſhall be concerned in ſtealing any of the ſame, and ſhall afterwards, being out of priſon diſcover any perſon to whom he offered to ſell, pawn, or deliver the ſame, ſo as he be convicted of ſuch miſdemeanor; he ſhall not be liable to be proſecuted for ſuch ſtealing. *ſ.* 9.

6. By the 21 *G.* 3. *c.* 69. Every perſon, who ſhall buy or receive any pewter pot or other veſſel, or any pewter in any form or ſhape whatever, knowing the ſame to be ſtolen or unlawfully come by; or ſhall privately buy or receive any ſtolen pewter, by ſuffering any door, window, or ſhutter to be left open or unfaſtened between ſun-ſetting and ſun-riſing; or ſhall buy or receive the ſame in any clandeſtine manner; he ſhall, altho' the principal felon has not been convicted, be tranſported not exceeding ſeven years, or detained in priſon and therein kept to hard labour not more than three years

nor

nor leſs than one; and within that time (if the court ſhall think fitting), to be once or oftener, but not more than thrice, publicly whipped.

7. Finally, By the 22 *G.* 3. *c.* 58. where any goods (except *lead*, *iron*, *copper*, *braſs*, *bell-metal*, and *ſolder*) ſhall have been ſtolen, whether the offence amounts to grand larceny or ſome greater offence, or to petty larceny only where the offender has been convicted of grand larceny or ſome greater offence; every perſon who ſhall buy or receive the ſame, knowing them to have been ſtolen, ſhall be guilty of a miſdemeanor, and puniſhed by fine, impriſonment, or whipping, as the court of quarter ſeſſions (who are hereby impowered to try him), or any other court before whom he ſhall be tried, ſhall think fit to inflict, altho' the principal be not convicted; and if the felony amounts to grand larceny, or ſome greater offence, and the perſon actually committing ſuch felony hath not been before convicted, ſuch offender ſhall be exempted from being puniſhed as acceſſary, if the principal ſhall be afterwards convicted. *ſ.* 1.

And one juſtice, on oath before him made, that there is reaſon to ſuſpect that ſtolen goods are knowingly concealed in any houſe or other place, may by his warrant cauſe ſuch houſe or place to be ſearched in the day time: and the perſon concealing or in whoſe cuſtody the ſame ſhall be found ſhall be guilty of a miſdemeanor, and puniſhed in the manner aforeſaid. *ſ.* 2.

And every conſtable within his conſtablewick, beadle within his ward, and watchman whilſt on duty, may apprehend any perſon, who may be reaſonably ſuſpected of having or carrying at any time after ſun-ſetting and before ſun-riſing any goods ſuſpected to be ſtolen, and carry him before a juſtice to be dealt with according to law; and on conviction of the offence, he ſhall be adjudged guilty of a miſdemeanor, and impriſoned not exceeding ſix kalendar months nor leſs than three. *ſ.* 3.

And any perſon, to whom any goods reaſonably ſuſpected to be ſtolen ſhall be offered to be ſold or pawned, may apprehend the perſon offering the ſame, and carry him before a juſtice. *ſ.* 4.

And if any perſon being out of cuſtody, or in cuſtody if under 15 years of age, upon any charge of felony within the benefit of clergy, ſhall have committed any felony, and afterwards diſcover two or more who have bought or received any ſtolen goods, ſo as two or more be convicted, he ſhall have the king's pardon for all ſuch felonies by him committed before ſuch diſcovery, which alſo ſhall be a bar to an appeal. *ſ.* 5.

IX.

XI. Offering goods ſuſpected to be ſtolen, to be pawned or ſold.

By the 30 *G.* 2. *c.* 24. If any perſon who ſhall offer by way of pawn, pledge, exchange, or ſale, any goods, ſhall not be able, or ſhall refuſe to give a ſatisfactory account of himſelf, or of the means by which he became poſſeſſed thereof; or if there ſhall be any other reaſon to ſuſpect that ſuch goods are ſtolen, or otherwiſe illegally or clandeſtinely obtained, it ſhall be lawful for any perſon, his ſervants or agents, to whom the ſame ſhall be offered, to ſeize and detain ſuch perſon and the ſaid goods, and to deliver him as ſoon as conveniently may be into the cuſtody of the conſtable or other peace officer, who ſhall immediately convey ſuch perſon and the ſaid goods before a juſtice; and if ſuch juſtice ſhall upon examination and inquiry have cauſe to ſuſpect that the ſaid goods were ſtolen, or illegally or clandeſtinely obtained, he may commit him to ſafe cuſtody for any time not exceeding ſix days in order to be further examined; and if upon either of the ſaid examinations it ſhall appear to the ſatisfaction of ſuch juſtice, that the ſaid goods were ſtolen, or illegally or clandeſtinely obtained, he ſhall commit the offender to the common gaol or houſe of correction, there to be dealt with according to law. *ſ.* 7.

Provided, that if ſuch goods ſo ſeized and detained as aforeſaid ſhall afterwards appear to be the property of the perſon who offered the ſame to be pawned, exchanged or ſold, or that he was authorized by the owner thereof to pawn, exchange or ſell the ſame; yet nevertheleſs the perſon who ſhall ſo ſeize or detain the party who offered the ſaid goods, ſhall be indemnified for having ſo done. *ſ.* 8.

X. Advertiſing or receiving a reward for helping to ſtolen goods.

By the 25 *G.* 2. *c.* 36. If any perſon ſhall publickly advertiſe a reward, with no queſtions aſked, for the return of things ſtolen or loſt, or ſhall make uſe of words therein purporting that ſuch reward ſhall be given, without ſeizing or making inquiry after the perſon producing ſuch thing; or ſhall offer to return to any pawnbroker, or other the money lent thereon, or other reward for the return thereof; he, and alſo the printer and publiſher of ſuch advertiſement, ſhall reſpectively forfeit 50 l, with coſts, to him who ſhall ſue in ſix months.

And by the 4 *G.* *c.* 11. Wherever any perſon taketh money or other reward, directly or indirectly, under pretence

tence, or upon account of helping any perſon to any ſtolen goods; he ſhall (unleſs he apprehend the felon, or cauſe him to be apprehended, and brought to trial, and give evidence againſt him) be guilty of felony in the ſame manner as if he had ſtolen the ſame. *ſ.* 4.

XI. Charges of proſecution and conviction how to be paid.

1. By the ſtatutes of the 3 *J.* *c.* 10. and the 27 *G.* 2. *c.* 3. The offender, if able, ſhall pay his own charges for carrying to gaol, and of thoſe who guard him thither; and if he is not able, then the treaſurer ſhall pay the ſame out of the county rates; as is ſhewn more at large in title **Commitment**.

2. By the 25 *G.* 2. *c.* 36. The court before whom any perſon hath been convicted of any grand or petit larceny or other felony, may at the prayer of the proſecutor, and on conſideration of his circumſtances, order the county treaſurer to pay him ſuch ſum as they ſhall judge reaſonable, not exceeding the expences he was put to in carrying on the proſecution, with a reaſonable allowance for his time and trouble: and the clerk of aſſize, or of the peace, ſhall forthwith make out ſuch order, and deliver the ſame to the proſecutor, on payment of 1 s, and the treaſurer ſhall pay the ſame on ſight, which ſhall be allowed in his accounts.

And by the 18 *G.* 3. *c.* 19. The court before whom any perſon hath been tried and *convicted* of any grand or petit larceny or other felony; or before whom any perſon hath been tried and *acquitted* of any grand or petit larceny or other felony, in caſe it ſhall appear to the ſaid court that there was a reaſonable ground of proſecution, and that the proſecutor had *bona fide* proſecuted; may order the treaſurer to pay to ſuch proſecutor ſuch ſum as they ſhall think reaſonable not exceeding the expences he was *bona fide* put unto, making alſo (if he ſhall appear to be in poor circumſtances) a reaſonable allowance for his trouble and loſs of time: which order the clerk of aſſize or clerk of the peace reſpectively, ſhall forthwith make out and deliver to him, on being paid for the ſame 1 s and no more; and the treaſurer upon ſight of the order ſhall forthwith pay the ſame.—And the juſtices in ſeſſions, from time to time, may lay down or alter ſuch rules and regulations concerning any coſts or charges to be allowed to any perſon by virtue of this act: Which rules and regulations, having received the approbation and ſignature of one or more of the judges of aſſize, ſhall be binding, and not otherwiſe, on all perſons whatſoever.

3. By

3. By the aforeſaid act of the 27 *G.* 2. *c.* 3. When any poor perſon ſhall appear on his recognizance, in ſuch caſe to give evidence, the court may allow him his reaſonable charges, to be paid in like manner by the treaſurer; the proper officer to have 6*d* for making out the order. Except in *Middleſex*, where the ſame ſhall be paid by the overſeers of the poor where the perſon was apprehended.

And by the 18 *G.* 3. *c.* 19. The court, where any perſon ſhall appear on *recognizance* or *ſubpœna* to give *evidence* as to any grand or petit larceny or other felony, whether any bill of indictment be preferred or not, may order the treaſurer to pay to him ſuch ſum as they ſhall think reaſonable, not exceeding the expences he was *bona fide* put unto, making alſo, if he ſhall appear to be in poor circumſtances, a reaſonable allowance for his trouble and loſs of time; which order the clerk of aſſize or of the peace reſpectively ſhall forthwith make out and deliver to him, on being paid for the ſame 6*d* and no more: and the treaſurer upon ſight of the order ſhall forthwith pay the ſame.

Warrant for larceny.

Weſtmorland. { To the conſtable of ——

FORASMUCH *as* A. I. *of* —— *in the county of* —— *yeoman, hath this day made information and complaint upon oath before me* —— *one of his majeſty's juſtices of the peace for the ſaid county, that this preſent day divers goods of him the ſaid* A. I. *to wit,* —— *have feloniouſly been ſtolen, taken and carried away from the houſe of him the ſaid* A. I. *at* —— *aforeſaid in the county aforeſaid, and that he hath juſt cauſe to ſuſpect, and doth ſuſpect, that* A. O. *late of* —— *yeoman, feloniouſly did ſteal, take, and carry away the ſame: Theſe are therefore to command you forthwith to apprehend him the ſaid* A. O. *and to bring him before me to anſwer unto the ſaid information and complaint, and to be further dealt with according to law: Herein fail you not. Given under my hand and ſeal the* —— *day of* —— *in the year* ——

Note; The form of a warrant to ſearch for ſtolen goods is inſerted under the title *Search warrant.*

Indictment for grand or petit larceny in general.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, That* A. O. *late of* —— *in the county of* —— *labourer, on the* ——

day of ——— in the ——— year of the reign of ——— with force and arms, at ——— in the county aforeſaid, one linen ſheet of the value of ——— of the goods and chattels of one A. I. *then and there being, feloniouſly did ſteal, take, and carry away, againſt the peace of our ſaid lord the king, his crown and dignity.*

Indictment for picking of pockets, or otherwiſe privately ſtealing from the perſon.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, That* A. O. *late of ——— in the pariſh of ——— yeoman, on the ——— day of ——— in the ——— year of the reign of ——— with force and arms, at the pariſh aforeſaid in the county aforeſaid, one ſilver watch of the value of ——— of the goods and chattels of one* A. I. *from the perſon of the ſaid* A. I. *ſubtilly, privately, craftily, and without the knowledge of the ſaid* A. I. *then and there feloniouſly did ſteal, take and carry away, againſt the peace of our ſaid lord the king, his crown and dignity.*

Indictment for breaking a houſe in the day time, ſome perſon being therein.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, That* A. O. *late of ——— in the county of ——— labourer, on the ——— day of ——— in the ——— year of the reign of ——— at the hour of ——— in the afternoon of the ſame day, with force and arms, at ——— in the county of ——— the dwelling houſe of one* A. I. *there ſituate, (one* B. I. *wife of the ſaid* A. I. *in the ſame houſe in the peace of God and of our ſaid lord the king then being) feloniouſly did break and enter, and one ſilver ſpoon of the value of ——— of the goods and chattels of him the ſaid* A. I. *then and there feloniouſly did ſteal, take, and carry away, and her the ſaid* B. I. *then and there in bodily fear and danger of her life feloniouſly did put; againſt the peace of our ſaid lord the king, his crown and dignity.*

Indictment for breaking a houſe in the day time, (no perſon being therein.)

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, That* A. O. *late of ——— on the ——— day of ——— in the ——— year of the reign of ——— at the hour of ——— in the afternoon of the ſame day, with force and arms, at ——— in the county*

aforeſaid, the dwelling houſe of one A. I. *there ſituate, feloniouſly did break and enter, and one ſilver ſpoon of the value of* —— *of the goods and chattels of him the ſaid* A. I. *then and there feloniouſly did ſteal, take, and carry away; againſt the peace of our ſaid lord the king, his crown and dignity.*

Indictment for ſtealing of goods out of a ſhop, warehouſe, coach-houſe, or ſtable.

Weſtmorland THE *jurors for our lord the king upon their oath preſent, That* A. O. *late of* —— *in the county aforeſaid, labourer, on the* —— *day of* —— *in the* —— *year of the reign of* —— *with force and arms at* —— *in the county aforeſaid, one piece of cloth of the value of* —— *of the goods and chattels of one* A. I. *in the ſhop of him the ſaid* A. I. *then and there being found, then and there privately and feloniouſly did ſteal, take, and carry away; againſt the peace of our ſaid lord the king, his crown and dignity.*

Leather.

Concerning the duties on leather, ſee title **Exciſe**.

THERE are ſeveral ſtatutes unrepealed, which were made before the firſt year of the reign of K. *James* the firſt, concerning leather; but the act made in that year renders them all uſeleſs, the ſame being intended to reduce all the acts into one relating to that commodity; which ſame thing was attempted in that king's reign, with ſucceſs, in divers other articles.

Therefore in this title I ſhall go no further back than the ſtatute of the 1 *J. c.* 22. And to avoid abundance of repetitions, I will firſt inſert the methods of recovering the ſeveral penalties, and will then proceed with this article in its ſeveral progreſſes, in the order of time, from the firſt flaying off the hide, to its being at laſt ſold and manufactured in leather, or exported,

I. General penalties and forfeitures under this title.
II. Of hides before they come to the tanner.
III. Of the tanning of hides.
IV. Of the currying of hides.
V. Of the ſearching and ſealing of leather.

VI. Of the triers of leather.
VII. Of the ſelling and regiſtring of leather.
VIII. Of the manufacturing of leather, or exporting it.
IX. Importing of leather gloves or mitts.

I. General penalties and forfeitures under this title.

Money and goods forfeited by the 1 J. how to be diſtributed.

1. All *forfeitures* by the act of the 1 *J. c.* 22. not hereafter otherwiſe ſpecially directed, ſhall be divided one third to the king, one third to him that ſhall ſue, and one third to the city, town, or lord of the liberty. 1 *J. c.* 22. *ſ.* 46.

And all *leather, ſhoes, or other things* made of tanned or curried leather, ſeized and condemned by the triers hereaftermentioned, by the ſaid ſtatute of the 1 *J. c.* 22. if in *London*, ſhall be brought to *Guildhall*, and prized by indifferent perſons, and the value thereof divided, one third to the ſeizor, one third to the chamber of *London*, and one third to ſuch poor as the mayor and four aldermen ſhall appoint: If in any other city, town, or place, they ſhall be brought to the common hall of ſuch town, or to ſome convenient and open place to be appointed by the lord of the liberty where no common hall is, there to be prized as aforeſaid, and the value divided, one third to the poor and in other deeds of charity after the diſcretion of the mayor or lord of the liberty, one third to the mayor for the uſe of the commonalty, or to the lord of the liberty where there is no mayor or other ſuch like officer, and one third to the ſeizor. 1 *J. c.* 22. *ſ.* 46.

Forfeitures on the 1 J. and on the 9 Ann. how to be recovered.

2. And the aboveſaid forfeitures on the 1 *J.* may be ſued for in any court of record, by action of debt, bill, plaint, or information, or otherwiſe. 1 *J. c.* 22. *ſ.* 46.

And likewiſe all juſtices of aſſize, juſtices of the peace, mayors, and ſtewards of leets, may inquire thereof in their ſeſſions, leet, or law day, and hear and determine the ſame. 1 *J. c.* 22. *ſ.* 50.

And moreover by the 9 *An. c.* 11. Any two juſtices near where the forfeitures on the ſaid act of the 9 *An.* ſhall be incurred, or offence committed, or where any offence ſhall be committed againſt the aforeſaid act of 1 *J. c.* 22. may hear and determine the ſame; who ſhall on information or complaint, in three months after any ſeizure made, or offence committed, ſummon the party accuſed, and the witneſſes: and on appearance or contempt in not appearing

appearing (on proof of notice given) ſhall proceed to examine witneſſes on oath, and give judgment, and iſſue warrants for levying the penalties, and cauſe the diſtreſs to be ſold, if not redeemed in ſix days. And if either party is not ſatisfied with the judgment, he may appeal to the next ſeſſions, who ſhall determine the ſame, and in caſe of conviction, iſſue warrants for levying the penalties. *ſ.* 36.

3. All forfeitures and ſums by the act of the 13 & 14 *C.* 2. *c.* 7. ſhall be recovered in any court at *Weſtminſter*, or in any court of record in the city, town, county, or place where the offence ſhall be committed; to be diſtributed half to the king, and half to the informer. *ſ.* 10. Forfeitures on the 13 & 14 C. 2. c. 7.

II. Of hides before they come to the tanner.

1. If any raw hide or calf ſkin ſhall wilfully or negligently be gaſhed or cut in flaying, or being gaſhed or cut ſhall be offered to ſale; the butcher or other perſon who impaired the ſame or the perſon offering the ſame to ſale, ſhall forfeit 2 s 6 d for every hide, and 1 s for every calf ſkin; half to the poor of the pariſh where it is found or offered to ſale, and half to him that ſhall ſue. 9 *An. c.* 11. *ſ.* 11. Gaſhing hides.

2. No butcher ſhall water any hide, except in *June*, *July*, and *Auguſt*; on pain of 3 s 4 d. 1 *J. c.* 22. *ſ.* 2. Watering hides.

3. No butcher ſhall offer any hide to ſale, being putrefied; on pain of 3 s 4 d. 1 *J. c.* 22. *ſ.* 2. Rotten hides.

4. None but tanners ſhall buy any rough hide or ſkin (except ſalt hides for the uſe of ſhips); on pain of forfeiting the ſame, or the value thereof. 1 *J. c.* 22. *ſ.* 7. Who may buy hides.

III. Of the tanning of hides.

1. No perſon ſhall be a tanner, but who hath ſerved ſeven years, except the wife or ſuch ſon of a tanner as hath uſed the trade four years, or the ſon or daughter of a tanner, or ſuch perſon who ſhall marry ſuch wife or daughter to whom he ſhall leave a tan houſe and fats; on pain of forfeiting all ſuch leather by him tanned, or of which he ſhall receive any profit, or the value thereof. 1 *J. c.* 22. *ſ.* 5. Who may be a tanner.

No tanner ſhall be a butcher, on pain of 6 s 8 d a day. 1 *J. c.* 22. *ſ.* 4.

No tanner ſhall be of any craft exerciſed in the cutting or working of leather; on pain of forfeiting the ſame, or the value thereof. 1 *J. c.* 22. *ſ.* 6.

2. No perſon ſhall fell any oak trees meet to be barked, where bark is worth 2 s a cart load, over and above the Oak bark.

charges of barking and pilling (except timber for houſes, ſhips or mills) but between *April* 1, and *June* 30; on pain of forfeiting the ſame, or double value thereof. 1 *J. c.* 22. *ſ.* 20.

No purveyor of timber ſhall fell for the king's uſe, any oak timber tree meet to be barked, but in barking time (except for the king's houſes or ſhips); or ſhall receive any profit by any lops, tops, or bark of trees to be taken by them; or ſhall take or diſpoſe from the owner, any more of any tree ſo to be taken, than only the timber thereof to be uſed only about the king's buildings or ſhips; on pain of forfeiting to the party grieved, for every tree, and for the lops, tops, and bark of every tree 40s. And the owner may with-hold any bark, lop, or top, any commiſſion or other matter notwithſtanding. 1 *J. c.* 22. *ſ.* 21.

Manner of tanning.

3. No tanner ſhall ſuffer any hide or ſkin to lie in the limes till they be over limed; nor ſhall put them into any tan fats, before the lime be perfectly ſokened and wrought out of them; nor ſhall uſe in the tanning thereof any thing but aſh bark, oak bark, tap wort, malt, meal, lime, culver dung, or hen dung; nor ſhall ſuffer it to lie wet till it be frozen; nor ſhall dry it by the fire, or ſummer ſun; nor ſhall tan any hide or ſkin putrefied or rotten; nor ſhall ſuffer the hides for utter ſole leather to lie in the woozes leſs than 12 months, nor the hides for upper leathers leſs than nine months, nor ſhall negligently work the hides in the woozes, but ſhall renew and make ſtrong their woozes, as often as ſhall be requiſite; nor ſhall put to ſale any leather tanned in any other ſort than by this ſtatute is limited: on pain of forfeiting every hide or ſkin tanned and offered to ſale contrary to this act, or the value thereof. 1 *J. c.* 22. *ſ.* 11.

No tanner ſhall raiſe with any mixtures any hide to be converted to backs, bend leather, clouting leather or any other ſole leather, except they be for largeneſs, ſtate, and growth fit for that purpoſe, to be tried by the triers hereafter mentioned; on pain of forfeiting the ſame. 1 *J. c.* 22. *ſ.* 12, 13.

No perſon ſhall ſet the fats in tan hills, or other places, where the woozes or leather may take any unkind heats; or ſhall put any leather into any hot or warm woozes; or ſhall tan any hide or ſkin with any hot or warm woozes; on pain of 10l, and the pillory on three market days in the next market town. 1 *J. c.* 22. *ſ.* 16, 17.

If any tanner or other perſon ſhall ſhave or cauſe to be ſhaved any hide or calf ſkin, before it be thoroughly tanned,

ned, whereby it ſhall be impaired; he ſhall forfeit the ſame or the value, half to the king, and half to him that ſhall ſue. 9 *An. c.* 11. *ſ.* 12.

Every tanner, who ſhall ſhave, cut, and rake the upper leather hides all over, or the necks of their backs and butts; ſhall forfeit the ſame or the value thereof, and the ſearchers and ſealers hereafter mentioned may ſeize them. 13 & 14 *C.* 2. *c.* 7. *ſ.* 8.

If any tanner ſhall offer to ſale any leather not thoroughly tanned or dried, to the ſatisfaction of the triers; he ſhall forfeit ſo much as ſhall be ſo deficient, whether whole hides or part thereof. 1 *J.* *c.* 22. *ſ.* 15.

IV. Of the currying of hides.

Who may be a currier.

1. No currier ſhall be a tanner, ſhoemaker, butcher, or other artificer uſing cutting of leather; on pain of forfeiting 6s 8d for every hide he ſhall curry during the time that he ſhall occupy any of the ſaid miſteries. 1 *J.* *c.* 22. *ſ.* 25.

Leather delivered to the currier.

2. Every artificer dealing in cutting of leather, or other perſon, who ſhall buy any red tanned leather, within *London*, or three miles thereof, ſhall before the next market day for ſale of leather, give notice thereof to one of the curriers company, and in three weeks after ſhall deliver the leather ſo bought (except what ſhall be uſed for ſoles without being curried, tallowed, or dreſſed) to the ſaid currier, to be curried, tallowed, or dreſſed; on pain of 6s 8d for every back, butt, hide, or calf ſkin. 13 & 14 *C.* 2. *c.* 7. *ſ.* 13.

In what time he ſhall curry it.

3. No currier ſhall refuſe to curry any leather to him brought by any artificer being a cutter of leather, and bringing with him ſufficient ſtuff for the perfect liquoring the ſame, with as convenient ſpeed as may be, not exceeding eight days in ſummer and 16 in winter, in the preſence of the ſaid artificer, if he will be preſent, otherwiſe in his abſence; on pain of forfeiting to the party grieved for every hide or piece of leather not in this manner curried, and well and ſpeedily dreſſed, 10s. 1 *J.* *c.* 22. *ſ.* 26.

And by the 12 *G.* 2. *c.* 25. If any currier ſhall refuſe to curry any leather brought or ſent to him by any perſon dealing or working in leather, or ſhall neglect to curry the ſame in 16 days between *Sept.* 28, and *March* 25, and in 8 days in the remaining part of the year; he ſhall, on conviction before one juſtice, on the oath of one witneſs, for-

feit any ſum not exceeding 5l, by diſtreſs; half to the informer and half to the poor. Perſons aggrieved may appeal to the next ſeſſions. *ſ.* 4, 5, 6.

Manner of currying it.

4. No perſon ſhall curry any leather in the houſe of any ſhoemaker or other perſon, but only in his own houſe ſituate in a corporate or market town; nor ſhall curry any leather except it be perfectly tanned; nor ſhall curry any hide or ſkin being not thoroughly dry after his wet ſeaſon; in which wet ſeaſon, he ſhall not uſe any ſtale urine, or any other deceitful or ſubtle mixture or means to hurt the ſame; nor ſhall curry any leather meet for utter ſole leather, with any other ſtuff than with hard tallow, nor with any leſs of that than the leather will receive; nor ſhall curry any leather meet for over leather, and inner ſoles, but with ſufficient ſtuff, being freſh and not ſalt, and thoroughly liquored till it can receive no more; nor ſhall burn or ſcald any hide or leather in the currying; nor ſhall ſhave any leather too thin, nor ſhall gaſh or hurt any leather in the ſhaving, or by any other means; but ſhall work the ſame ſufficiently in all points; on pain of forfeiting for every ſuch offence (other than in gaſhing or hurting in ſhaving) 6s 8d, and the value of ſuch ſkin or hide marred by his evil workmanſhip; and for every offence in gaſhing or hurting by ſhaving, double ſo much to the party grieved, as the leather ſhall be impaired thereby, by the judgment of the wardens of the curriers, and of the warden of the company whereof the party grieved ſhall be. 1 *J. c.* 22. *ſ.* 22.

V. Of the ſearching and ſealing of leather.

Searchers and ſealers in London.

1. The mayor and aldermen of *London* (on pain of 40l for every year they make default, half to the king, and half to him that ſhall ſue) ſhall yearly appoint 8 freemen of ſome of the companies of cordwainers, curriers, ſadlers, or girdlers (whereof one ſhall be a ſealer and keep a ſeal for the ſealing of leather); who ſhall be ſworn before them to do their office truly: And they ſhall ſearch and view all tanned leather brought to market, whether it is thoroughly tanned and dried; and if it is, ſhall ſeal the ſame. 1 *J. c.* 22. *ſ.* 31.

And four of the ſaid ſearchers ſhall be removed at the end of the year, and four new ones choſen; and no one ſhall continue in the office above two years together, nor ſhall be employed again till after the end of three years; on pain of 10l a month. 1 *J. c.* 22. *ſ.* 36.

2. And

2. And all mayors, and lords of liberties, fairs, and markets, out of the compaſs of three miles from *London*, ſhall (on like pain of 40 l) appoint and ſwear yearly two, three, or more honeſt and ſkilful men, to be ſearchers within their precincts; who ſhall ſearch as often as they ſhall think good, or need ſhall be, and ſhall ſeal what they find ſufficient: And if they find any leather offered to be ſold, or brought to be ſealed, which ſhall be inſufficiently tanned or curried, or any boots, ſhoes, bridles, or other thing made of tanned or curried leather, inſufficiently tanned, curried, or wrought, they may ſeize and keep the ſame, till they be tried by the triers. 1 *J. c.* 22. *ſ.* 32. In other places.

3. The wardens of the curriers ſhall ſearch and try all ſuch curried leather as ſhall be brought to any of their company to be curried, and ſhall with a ſeal therefore to be prepared, with convenient ſpeed, not exceeding one day after the currying and requeſt made, ſeal ſuch leather as they ſhall find ſufficiently curried; taking for every hide ſo ſealed after the rate of one penny for the dicker, and for every ſix dozen of calf ſkins one penny, to be paid by the currier: on pain of forfeiture for every hide not ſearched and ſealed 6 s 8 d. 1 *J. c.* 22. 27. Fee for ſealing.

But they ſhall not viſit, ſearch, or ſeize any leather, hide, or ſkin, but ſuch as ſhall be curried or dreſſed within *London* or three miles thereof, by ſome member of their own company, nor in any other place but in the open market, or in the ſhops, houſes, or warehouſes of ſuch curriers. 1 *W. ſeſſ.* 1. *c.* 33. *ſ.* 4.

4. If any ſearcher or ſealer ſhall refuſe with convenient ſpeed to ſeal any leather which is ſufficient, or do allow that which is inſufficient; he ſhall forfeit 40 s. If he ſhall receive any bribe, or exact any other fee than by this act is appointed, he ſhall forfeit 20 l. And if he ſhall refuſe to execute his office, he ſhall forfeit 10 l. 1 *J. c.* 22. *ſ.* 37. Penalty on the ſearcher or ſealer miſbehaving.

5. If any perſon ſhall deny, or withſtand, or not ſuffer the ſearching or ſeizing of inſufficient wares, he ſhall forfeit 5 l. 1 *J. c.* 22. *ſ.* 40. Penalty on hindring the ſearcher.

VI. Of the triers of leather.

1. The mayor of *London* (on pain of 5 l. half to the king, and half to him that ſhall ſue) ſhall within ſix days after notice given to him of any ſeizure of any leather, red Triers in London.

and unwrought, appoint ſix triers, two of the cordwainers company, two of the curriers, and two of the tanners uſing *Leadenhall* market; who upon their oaths to be taken before him, ſhall on the ſecond or third market day for leather (to be holden on *Tueſday*, 13 & 14 *C.* 2. *c.* 7. *ſ.* 9.) in the afternoon, try whether the ſame be ſufficient or not. 1 *J.* *c.* 22. *ſ.* 33, 35.

In other places. 2. Every other mayor, or lord of liberty, out of the compaſs of three miles from *London* within whoſe precincts any ſeizure of any tanned leather, red or curried, or of any ſhoes, boots, or other wares made of tanned leather ſhall be, ſhall (on like pain) with all convenient ſpeed after notice given to him of ſuch ſeizure, appoint ſix honeſt and expert men, to try whether the ſame be ſufficient or not; the ſame trial to be openly on ſome market day, and within 15 at the fartheſt from the time of the ſeizure, upon the oaths of the ſaid triers. 1 *J.* *c.* 22. *ſ.* 34.

Triers miſbehaving. 3. Triers not doing their duty, ſhall forfeit 5 l. 1 *J.* *c.* 22. *ſ.* 35.

VII. Of the ſelling and regiſtring of leather.

Selling unſealed. 1. No perſon ſhall put to ſale any tanned leather red and unwrought, but in open fair or market, unleſs the ſame hath been firſt ſearched and ſealed; nor ſhall offer to ſale any tanned leather red and unwrought before it be ſearched and ſealed; on pain of forfeiting the ſame, or the value thereof, and alſo for every hide or piece 6 s 8 d, and for every dozen of calves ſkins 3 s 4 d. 1 *J.* *c.* 22. *ſ.* 14.

But no perſon ſhall incur any penalty for ſelling or buying any ſheep ſkins unſearched or unſealed. 4 *J.* *c.* 6. *ſ.* 2.

Where to be ſold and regiſtred. 2. All red tanned leather ſhall be bought only in the open fair or market, and not in any houſe, yard, ſhop, or other place; on pain of forfeiting the ſame, or the value thereof, and the contract to be void. And all ſuch leather ſhall be ſearched and ſealed before ſale, and on ſale ſhall be regiſtred, and an entry made both by the buyer and ſeller, both being preſent, and their names and dwellings entred into the book of the regiſter; on pain that every ſuch buyer or ſeller who ſhall make default, ſhall forfeit the ſame or the value thereof. 13 & 14 *C.* 2. *c.* 7. *ſ.* 4.

Fee for regiſtring. 3. Searchers and ſealers ſhall keep a regiſter, wherein they ſhall enter all bargains made for leather, hides, or ſkins,

ſkins, during the fair or market, being thereunto required by the buyer or ſeller, with the prices; taking for ſearching, ſealing, and regiſtring of every ten hides, backs, or butts, of the ſeller, 2 d, and ſo after the ſame rate; and for every ſix dozen of calves ſkins or ſheep ſkins, 2 d, and of the buyer after the ſame rate. 1 *J.* *c.* 22. *ſ.* 41.

4. All red tanned leather which ſhall be brought into *London*, or within three miles thereof, ſhall be brought to *Leadenhall* before it be houſed, and there viewed whether it hath been ſearched or ſealed, and ſhall be regiſtred by the ſearchers, with half ſuch fees to be paid for ſuch of the ſaid tanned leather as ſhall be bought out of *London*, or three miles compaſs from the ſame, and ſearched and ſealed before it be brought within the city; on pain that every perſon houſing or not bringing his leather to *Leadenhall* as aforeſaid, ſhall forfeit for every hide or ſkin 6 s 8 d. 1 *J.* *c.* 22. *ſ.* 38. Regiſtring in London.

5. By the 1 *J.* *c.* 22. No perſon ſhall buy any tanned leather unwrought, but who ſhall work the ſame into wares; on pain of forfeiting the ſame, or the value thereof. *ſ.* 8. Buyer of leather ſelling it again unwrought.

But by the 12 *G.* 2. *c.* 25. All perſons who deal or work in leather, may buy all ſorts of tanned leather in open fair or market, whether curried or uncurried, being firſt ſearched and ſealed; and may cut and ſell the ſame in any ſmall pieces in their open ſhops. *ſ.* 1.

And by the 1 *W.* *ſeſſ.* 1. *c.* 33. All dealers or workers in leather may buy all ſorts of red tanned leather in open fair or market, whether curried or uncurried, being firſt ſearched and ſealed, and may ſell it again in their open ſhops, or cut and convert it into other made ware. *ſ.* 5.

6. Within *London*, or three miles thereof, no perſon ſhall ſell any wares appertaining to the miſtery of any artificer cutting leather, but only in open ſhop, common fair or market, whereby the wardens may have ſearch thereof; on pain of forfeiting the ſame, and alſo 10 s. 1 *J.* *c.* 22. *ſ.* 45. Where it may be ſold in London.

VIII. Of the manufacturing of leather, or exporting it.

1. No ſhoemakers ſhall make any boots or ſhoes, or any part of them, of *Engliſh* leather wet curried (other than deer ſkins, calves ſkins, or goat ſkins made and dreſſed like *Spaniſh* leather), but of leather well and truly tanned and curried in manner aforeſaid, or of leather well Shoemaker's duty.

and truly tanned only, and well ſewed, without mixing overleathers, that is to ſay, part being neats leather, and part calves leather; nor ſhall put into any part of any ſhoes or boots, any leather made of a ſheep ſkin, bull hide, or horſe hide; nor in the upper leather of any ſhoes, or into the nether part of any boots (the inner part of the ſhoe only excepted) any part of any hide from which the ſole leather is cut, called the wombs, necks, ſhanks, flank, powle, or cheek; nor ſhall put into the utter ſole any other leather, than the beſt of the ox or ſteer hide; nor into the inner ſole, any other leather than the wombs, neck, powle, or cheek; nor into the treſwells of the double ſoled ſhoes, other than the flanks of any of the hides aforeſaid; nor ſhall make or put to ſale between *September* 30, and *April* 20, any ſhoes or boots meet for any perſon above four years old, wherein ſhall be any dry *Engliſh* leather, other than calves ſkins or goats ſkins made or dreſſed like *Spaniſh* leather; on pain of forfeiting for every pair of ſhoes or boots 3s 4d, and the value thereof. 1 *J.* *c.* 22. *ſ.* 28.

Artificers working bad leather.

2. And if any ſhoemaker, ſadler, or other artificer uſing of leather, do make any wares of any tanned leather inſufficiently tanned, or of tanned and curried leather being not ſufficiently tanned and curried; he ſhall forfeit the ſame, and the value thereof. 1 *J.* *c.* 22. *ſ.* 44.

Shoemakers in London.

3. If any ſhoemaker or cobler within *London* or three miles thereof, ſhall put any tanned leather into any boots or ſhoes, or other things made of tanned leather, which ſhall not be well and perfectly tanned, or do put any curried leather into boots or ſhoes or other things made of leather, which ſhall not be ſufficiently tanned and curried, and alſo ſealed; he ſhall forfeit the ſame, and the value thereof. 1 *J.* *c.* 22. *ſ.* 44.

Search in London for inſufficient wares.

4. And the maſter and wardens of the miſteries of cordwainers, curriers, girdlers, and ſadlers of *London* (on pain of 40l for every year they make default, half to the king and half to him that ſhall ſue) ſhall once a quarter or oftner make ſearch and view of all boots and ſhoes, and other wares made of tanned leather, within three miles of *London*, and if they are not truly wrought, they may ſeize and carry the ſame to the ſeveral common halls. 1 *J.* *c.* 22. *ſ.* 29.

And by the 1 *W. & M.* 1. *c.* 33. *ſ.* 3. Every hide, ſkin, or piece of tanned leather ſhaved or liquored, of what colour ſoever, with any lawful liquor or dreſſing, and being well and truly curried, ſhall be deemed *ware* within the ſaid ſtatute of the 1 *J.* *c.* 22.

5. All

5. All ſorts of leather and ſkins, tanned or dreſſed, may be exported. 20 *C.* 2. *c.* 5. 9 *An.* *c.* 6. *ſ.* 4. Exportation.

IX. Importing of leather gloves or mitts.

1. For encouragement of the importation of foreign kid and lamb ſkins unmanufactured; if any foreign manufactured leather gloves or mitts ſhall be imported, the ſame ſhall be forfeited, and may be ſearched for and ſeized by any officer of the cuſtoms or exciſe: And every perſon importing the ſame, or aiding therein; or, being a vender or retailer of any kind of leather gloves or mitts, in whoſe poſſeſſion any ſuch foreign manufactured leather gloves or mitts ſhall be found; or who ſhall ſell or expoſe the ſame to ſale; or conceal the ſame with intent to prevent the forfeiture; ſhall over and above the forfeiture of the ſaid goods, and all intereſt he may have therein, forfeit alſo 200*l*, with double coſts. 6 *G.* 3. *c.* 19. *ſ.* 1.

2. If the ſeizure ſhall be out of the limits of the bills of mortality, and not exceed the value of 20*l*, two juſtices may hear and determine the ſaid cauſe of ſeizure of the ſaid goods. *ſ.* 2.

3. After condemnation, the ſame to be publickly ſold to the beſt advantage, by the candle, for exportation; and not to be delivered out, till ſecurity be given that the ſame ſhall be exported, and not landed in any part of his majeſty's dominions. *ſ.* 3.

4. Half the produce ariſing by the ſale, to go to the king; and half to the officer who ſhall ſeize and ſecure the ſame. *id.*

5. And if any doubt ſhall ariſe where the ſame were manufactured, the proof ſhall lie on the perſon in whoſe poſſeſſion they ſhall be found, and not on the proſecutor; and if no proof be given that they were manufactured in Great Britain, they ſhall without any further proceeding be taken to have been manufactured out of Great Britain. *ſ.* 4.

6. Provided, that if any perſon, in whoſe poſſeſſion ſuch goods ſhall be found (ſuch perſon not importing or concealing the ſame) ſhall diſcover upon oath, before one juſtice, the perſon who ſold the ſame to him, ſo as ſuch vender may be convicted; he ſhall be indemnified. *ſ.* 5.

7. The ſaid pecuniary forfeitures to be ſued for in the courts at Weſtminſter; and to be diſtributed half to the

king, and half to the officer who ſhall inform and ſue. *ſ.* 6.

8. But if the officers of the cuſtoms or exciſe ſhall neglect or refuſe, for one calendar month after condemnation, to proſecute for the pecuniary penalty; any other perſon may ſue for the ſame, to be diſtributed as aforeſaid, half to the king, and half to him that ſhall ſue. *ſ.* 7.

9. Provided, that nothing herein ſhall extend to ſubject any wearer of ſuch gloves or mitts, as part of his dreſs only, to any forfeiture or pecuniary penalty. *ſ.* 8.

Lecturer.

BY the 13 & 14 *C.* 2. *c.* 4. Lecturers in churches, unlicenced, and not conforming to the liturgy, ſhall be diſabled, and ſhall alſo ſuffer three months impriſonment in the common gaol; and two juſtices (or the mayor in a town corporate) ſhall, upon certificate from the ordinary commit them accordingly. *ſ.* 19—23.

Leet.

Meaning of the word.

1. LEET (*leth*, *læthe*, *lathe*) is of *Saxon* original, and ſeemeth to be no other than the court of the *lathe*; as the county court is the court of the county. For in ancient times the counties were ſubdivided into lathes, rapes, wapentakes, hundreds, and the like. And the ſheriff twice a year performed his *tourn* or perambulation, for the execution of juſtice throughout the county. Afterwards this power of holding courts was granted to divers great men, within certain diſtricts. And from hence, theſe courts, holden within particular parts of the county, have deſcended unto us without variation, under the name of the *leet*, *leth*, or *lathe* courts.

Leet, what.

2. The *court leet* is a court of record, having the ſame juriſdiction within ſome particular precinct, which the ſheriff's *torn* hath in the county. 2 *Haw.* 72.

3. For

3. For the leet, or view of frankpledge, was by the king (for the eaſe of the people) divided, and derived from the torn; who did grant to the lords to have the view of the tenants and reſiants within their manors; ſo as the tenants and reſiants ſhould have the ſame juſtice that they had before in the torn done unto them at their own doors, without any charge or loſs of time. 2 *Inſt.* 71. Leet derived from the torn.

4. The inſtitution hereof for keeping of the king's peace, was, that every freeman at his age of 12 years (except peers, clergymen, and tenants in ancient demeſne, 2 *Haw.* 57.) ſhould in the leet, if he were in any leet, or in the torn if he were not in any leet, take the oath of allegiance to the king; and that pledges or ſureties ſhould be found for his truth to the king, and to all his people, or elſe to be kept in priſon: This frankpledge conſiſted moſt commonly of ten houſholds, which the *Saxons* called *theothung*, in the north parts they call them *tenmentale*, in other places of *England tithing*; whereof the maſters of the nine families who were bound, were of the *Saxons* called *freeborgh*, which in ſome places is to this day called *freeborrow*, that is, free ſurety, or frankpledge, and the maſter of the tenth houſhold was called *theothungmon*, to this day in the weſt called *tithingman*, and *tithenheofod*, and *freeborher*, that is *capitalis plegius*, chief pledge; and theſe ten maſters of families, were bound one for another's family, that each man of their ſeveral families ſhould ſtand to the law, or if he were not forthcoming, that they ſhould anſwer for the injury or offence by him committed. And the precinct of this frankpledge was called *decenna*, becauſe it conſiſted moſt commonly of ten houſholds; and every man of thoſe ſeveral houſholds, for whom the pledge or ſurety was taken, were called *decennarii*; which names are continued as ſhadows of antiquity to this day. 2 *Inſt.* 73. Frankpledge.

And by the due execution of this law, ſuch peace was univerſally holden within this realm, as no injuries, homicides, robberies, thefts, riots, tumults, or other offences were committed; ſo as a man with a white wand might ſafely have ridden before the conqueſt, with much money about him, without any weapon, throughout England. 2 *Inſt.* 73.

But no perſon is obliged to appear at any leet, within the precincts whereof he doth not reſide. 2 *Haw.* 57.

5. He that claims a leet by charter, muſt hold it on the days preſcribed by the charter; he that claims it by preſcription, may claim to hold it once or twice every year, at any ſuch days as ſhall upon reaſonable warning be appointed, Leet when to be holden.

pointed, if the uſage hath been ſo that it hath been kept at uncertain times; or elſe it ought to be kept at ſuch certain days and times, as by preſcription hath been certainly uſed. 2 *Inſt.* 72.

Offences within the leet, not inquirable in the torn.

6. If a nuſance done within the juriſdiction of the leet, be not preſented in the leet, the ſheriff in his torn cannot inquire of it; for that which is within the precinct of the leet is exempt from the torn, otherwiſe there might be a double charge; but in that caſe a writ may be directed to the ſheriff to inquire thereof. 4 *Inſt.* 261.

Steward may commit for an affray.

7. It ſeems that a court leet is ſo far intruſted with the keeping of the peace within its own precinct, that the ſteward of it may by recognizance bind any perſon to the peace, who ſhall make an affray in his preſence, ſitting the court, or may commit him to ward, either for want of ſureties, or by way of puniſhment, without demanding any ſureties of him, in which caſe he may afterwards impoſe a fine according to his diſcretion. 2 *Haw.* 4.

What felonies are cognizable in the leet.

8. The leet hath power to receive indictments of felonies at the common law, but not of felonies by act of parliament, unleſs ſpecially limited thereto. 2 *H. H.* 71.

Other publick offences.

9. Furthermore, this court hath cognizance of a great number of offences, both by the common law, and by ſtatute; as for inſtance, tipling in alehouſes; aſſaults whereby bloodſhed enſueth; common barators; bawdy houſes; defects in bridges and highways; deſtroyers of ancient boundaries; bakers; brewers; butchers; curriers; deciners or ſuitors not appearing in the leet; eſtrays, waifs, and treaſure trove; eave droppers; foreſtallers, regrators, ingroſſers; deſtroyers of game; gameſters; hedge breakers; neglecters of hue and cry; higlers, innholders; millers; night walkers; common nuſances; want of pillory and ſtocks, and common pounds; reſcous; ſcolds; ſhoemakers; ſearchers of leather; ſtoned horſes of two years old put on the common; victuallers; conſtables neglecting watch and ward; weights and meaſures; and many others by particular ſtatutes. *Wood. b.* 4. *c.* 1.

Private offences.

10. But a man cannot be preſented in the leet for ſurcharging the common, or for digging in the common; becauſe this concerns the private, not the publick intereſt, and belongs rather to the court baron to inquire of it. *Wood. b.* 4. *c.* 1.

Within what time offences are cognizable.

11. Alſo no offence is cognizable in the leet, unleſs it aroſe ſince the holding of the laſt court. 2 *Haw.* 66.

12. The

12. The conſtables of common right are to be choſen and ſworn in the leet or torn. 2 *Haw.* 62. Conſtable choſen in the leet.

13. The leet ſeems not to be within the equity of the ſtatute of 1 *R.* 3, which requires that the jurors in the torn ſhall have 20 s a year freehold, or 26 s 8d copyhold or cuſtomary; for it is ſaid, that any perſon happening to be preſent at the leet, or to be riding by the place where it is holden, may for the want of jurors be compelled by the ſteward to be ſworn, whether he be reſident within the leet or not: by which it ſeems to be implied, that any perſon whatſoever is capable of being put upon the jury in a court leet. 2 *Haw.* 69. Jurors.

14. Indictments in the leet ought to be by roll indented, one to remain with the indictors, and the other with the ſteward, to prevent embezilling. 2 *Haw.* 69. Indictments to be indented.

15. Although the leet may receive indictments of felony, yet it cannot hear and determine them, but muſt ſend them to the gaol delivery, there to be heard and determined, if the offenders are in cuſtody; or remove them by certiorari into the king's bench, that proceſs may be made upon them to outlawry. 2 *H. H.* 71. Indictments of felonies, how to be certified.

16. It ſeems to be agreed, that a preſentment in the leet of any offence within the juriſdiction of the court, being neither capital nor concerning any freehold, ſubjects the party to a *fine* or *amerciament* without any further proceeding, and admits of no traverſe to the truth of it: But if it touch the party's freehold, it may be removed into the king's bench, and there traverſed. 1 *Haw.* 217, 219. 2 *Haw.* 71. Traverſe.

17. A *fine* is a pecuniary puniſhment, aſſeſſed by the ſteward, for an offence or contempt committed in court, or by publick officers out of court, in adminiſtration of their offices; a fine is always aſſeſſed by the ſteward, and is not to be affeered, though ſometimes it is called an amerciament; and the lord by a ſpecial warrant to the bailiff may diſtrain, or he may have an action of debt, for a fine impoſed; but he cannot impriſon. And this is the only court that can fine and not impriſon. *Wood. b.* 4. *c.* 1. 2 *H.* 61. Fine.

18. An *amerciament* is a pecuniary puniſhment, aſſeſſed by the homage or jury, for offences committed out of court by private perſons, to be mitigated by affeerers (from *oſſeurer*, to tax), who are to affirm the reaſonableneſs thereof upon their oaths, where no expreſs penalty is inflicted by ſtatute; and for this alſo the lord may have an action of debt, or may diſtrain of common right, and Amerciament.

im-

impound the diſtreſs, or ſell it at his pleaſure, but cannot impriſon for it. *Wood. b.* 4. *c.* 1.

Amerciament how recovered.

19. And upon preſentment of a nuſance, the ſteward may either amerce the perſon, and order him alſo to remove it by ſuch a day, under pain of forfeiting a certain ſum; or he may order him to remove it, under ſuch a pain, without amercing him at all: And on preſentment at another court, that he hath not removed ſuch nuſance (having had notice thereof) the pain may be recovered by diſtreſs or action of debt, without farther proceeding. 2 *Haw.* 61.

By-laws.

20. It ſeemeth that of common right any court leet, with the aſſent of the tenants, may make by-laws under certain penalties, in relation to matters properly within the cognizance of ſuch court, as the reparation of the highways, and the like: And alſo a court baron by cuſtom may make by-laws, for the well regulating of commons, and ſuch like private matters. And therefore where a court leet and baron are holden together, as they uſually are, it ſeems, that what is tranſacted therein, in relation to public matters, ſhall be applied to the juriſdiction of the court leet, and what is done in relation to private matters, ſhall be intended to be done by the court baron. 2 *Haw.* 68.

Pillory and ſtocks.

21. The lord of the leet ought to have a pillory and tumbrel: and for want thereof, he may be fined, or his liberty ſeized. *Cro. El.* 698.

But the ſtocks are to be provided at the charge of the town; for originally they were not to puniſh, but to keep men in hold. *Wood. b.* 4. *c.* 1.

Buſineſs devolved on the ſeſſions.

22. But the buſineſs of the leet hath declined for many years; and is devolved on the quarter ſeſſions.

Letter.

BY the 9 *G. c.* 22. and 27 *G.* 2. *c.* 15. If any perſon ſhall knowingly ſend any letter, without any name ſubſcribed thereto, or ſigned with a fictitious name, demanding money or other valuable thing; or threatning to kill or murder any of his majeſty's ſubjects, or to burn their houſes, outhouſes, barns, ſtacks of corn or grain, hay or ſtraw; tho' no money or veniſon or other valuable thing be demanded by ſuch letter; or ſhall reſcue any perſon in cuſtody for ſuch offence; he ſhall be guilty of felony without benefit of clergy.

And

And by the 30 *G.* 2. *c.* 24. All perſons who ſhall knowingly ſend or deliver any letter or writing, with or without a name ſubcribed thereto, or ſigned with a fictitious name, threatning to accuſe any perſon of any crime puniſhable by law with death, tranſportation, pillory, or any other infamous puniſhment, with intent to extort from him any money or other goods, ſhall be puniſhed at the diſcretion of the court by fine and impriſonment, pillory, whipping, or tranſportation for ſeven years.

Seditious or defamatory letters, belong to title **Libel.**

Lewdneſs.

1. IF any offend their brethren by adultery, whoredom, inceſt, or any other uncleanneſs, the churchwardens ſhall preſent them to the ordinary, and they ſhall not be admitted to the holy communion, till they be reformed. *Can.* 109.

2. But altho' lewdneſs be properly puniſhable by the eccleſiaſtical law, yet the offence of keeping a bawdy houſe cometh alſo under the cognizance of the law temporal, as a common nuſance, not only in reſpect of its endangering the publick peace, by drawing together diſſolute and debauched perſons, but alſo in reſpect of its apparent tendency to corrupt the manners of both ſexes. 3 *Inſt.* 205. 1 *Haw.* 196.

3. And in general, all open lewdneſs groſsly ſcandalous is puniſhable upon indictment at the common law. 1 *Haw.* 7.

4. And offenders of this kind are puniſhable not only with fine and impriſonment, but alſo with ſuch infamous puniſhment as to the court in diſcretion ſhall ſeem proper. 1 *Haw.* 196.

5. And upon information given to a conſtable, that a man and woman are in adultery or fornication together, or that a man and woman of evil report are gone to a ſuſpected houſe together in the night, the officer may take company with him, and if he find them ſo, he may carry them before a juſtice, to find ſureties of the good behaviour. *Dalt. c.* 124. 2 *Haw.* 61.

6. For it ſeems always to have been the better opinion, that a man may be bound to his good behaviour, for haunting bawdy houſes with women of bad fame, as alſo for keeping bad women in his own houſe. 1 *Haw.* 132.

7. And a wife may be indicted together with her huſband and condemned to the pillory with him, for keeping a bawdy houſe; for this is an offence as to the government of the houſe; in which the wife has a principal ſhare; and alſo ſuch an offence as may generally be preſumed to be managed by the intrigues of her ſex. 1 *Haw.* 2.

8. And if a wife go away, and remain with an adulterer without being reconciled to her huſband, ſhe ſhall loſe her dower. 2 *Inſt.* 435.

9. But if a perſon is indicted for frequenting a bawdy houſe, it muſt appear that he knew it to be ſuch a houſe; and it muſt be expreſsly alledged that it is a bawdy houſe, and not that it is ſuſpected to be ſo. *Wood. b.* 3. *c.* 3.

10. On an indictment for keeping a diſorderly houſe, a female witneſs ſwore, that ſhe was a ſailor's wife, and during her huſband's abſence out of the realm ſhe had often proſtituted herſelf there: Lord *Raymond* ſaid, it was an odious piece of evidence and ought not to be heard. *Barl.* Bawdy-h.

11. But it is ſaid a woman cannot be indicted for being a bawd generally, for that the bare ſolicitation of chaſtity is not indictable. 1 *Haw.* 196. 1 *Salk.* 382.

Indictment for keeping a diſorderly houſe.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of* ——— *in the ſaid county, labourer, on the* ——*day of* ——*in the* ——*year of the reign of* ——— *and at divers other times as well before as after, with force and arms at* ——— *aforeſaid, in the county aforeſaid, did keep and maintain, and yet doth keep and maintain, a certain common, ill-governed and diſorderly houſe, and in the ſaid houſe, for his own lucre and gain, certain evil and ill-diſpoſed perſons, as well men as women, of evil name and fame, and of diſhoneſt converſation, to frequent and come together then, and the ſaid divers other times, there unlawfully and wilfully did cauſe and procure; and the ſaid men and women, in the ſaid houſe, at unlawful times, as well in the night as in the day, then and the ſaid other times, there to be and remain, drinking, tipling, whoring, and miſbehaving themſelves, unlawfully and wilfully did permit, and yet doth permit, to the great damage and common nuſance of all the ſubjects of our ſaid lord the king, and againſt the peace of our ſaid lord the king, his crown and dignity.*

Libel.

Libel.

I. What it is.
II. Who are puniſhable for it.
III. How puniſhable.

I. What it is.

A Libel *is a malicious defamation of any perſon, expreſſed either in printing or writing, ſigns or pictures, to aſperſe the reputation of one that is alive, or the memory of one that is dead.* Wood. b. 3. c. 3.

A malicious defamation] And the ſcandal which is expreſſed in a ſcoffing and ironical manner, is as properly a malicious defamation, as that which is expreſſed in direct terms; as where a perſon propoſes one to be imitated for his courage, who is known to be a great ſtateſman, but no ſoldier; and another to be imitated for his learning, who is known to be a great general, but no ſcholar; and the like: Which kind of writing is as well underſtood to mean only to upbraid the parties with the want of theſe qualities, as if it had directly and expreſsly done ſo. 1 *Haw.* 194.

And from the ſame foundation it hath alſo been reſolved, that a defamatory writing, expreſſing only one or two letters of a name, in ſuch a manner, that from what goes before and follows after, it muſt needs be underſtood to ſignify ſuch a particular perſon, in the plain, obvious, and natural conſtruction of the whole, and would be perfect nonſenſe if reſtrained to any other meaning, is as properly a libel, as if it had expreſſed the whole name at large; for it brings the utmoſt contempt upon the law, to ſuffer its juſtice to be eluded by ſuch trifling evaſions: And it is a ridiculous abſurdity to ſay, that a writing which is underſtood by every the meaneſt capacity, cannot poſſibly be underſtood by a judge and jury. 1 *Haw.* 194.

And it matters not whether the libel be true, or whether the party againſt whom it is made be of good or bad fame; for in a ſettled ſtate of government, the party grieved ought to complain, for any injury done to him, in the ordinary courſe of law, and not by any means to revenge himſelf, either by the odious courſe of libelling, or otherwiſe, 5 *Co.* 125. But this is to be underſtood, when the

profecution is by information or indictment; but in an action on the caſe, which is to repair the party in damages, the defendant may juſtify the truth of the facts, and ſhew that the plaintiff hath received no injury. 3 *Blackſt.* 126.

Of any perſon] Where a writing inveighs againſt mankind in general, or againſt a particular order of men, as for inſtance, men of the gown, this is no libel; but it muſt deſcend to particulars and individuals to make it a libel. 3 *Salk.* 224.

Expreſſed either in printing or writing, ſigns or pictures] A libel is either in writing, or without writing: In writing, when an epigram, rhyme, or other writing is publiſhed to the contumely of another, by which his fame or dignity may be prejudiced: Without writing, may be by pictures, as to paint the party in any ſhameful and ignominious manner; or by ſigns, as to fix a gallows, or other reproachful and ignominious ſigns at a man's door. 5 *Co.* 125.

E. 7 *G.* Mayor of *Northampton*'s caſe. He ſent lord *Halifax* a licence to keep a public houſe, which the court ſaid was a libel in the caſe of a perſon of his quality, and granted an information for it. *Str.* 422.

Or the memory of one that is dead] For the offence is the ſame, whether the perſon libelled be alive or dead. 5 *Co.* 125.

II. Who are puniſhable for it.

It is certain, that not only he who compoſes a libel, or procures another to compoſe it, but alſo he who publiſhes, or procures another to publiſh it, are in danger of being puniſhed for it; and it is ſaid not to be material, whether he who diſperſes a libel know any thing of the contents or effect of it or not; for nothing would be more eaſy, than to publiſh the moſt virulent papers with the greateſt ſecurity, if the concealing the purport of them from an illiterate publiſher, would make him ſafe in diſperſing them. 1 *Haw.* 195.

Alſo it hath been ſaid, that if he who hath either read a libel himſelf, or hath heard it read by another, do afterwards maliciouſly read or repeat any part of it, in the preſence of others, or lend or ſhew it to another, he is guilty of an unlawful publication of it. 1 *Haw.* 195.

Alſo it hath been holden, that the copying of a libel ſhall be a concluſive evidence of the publication of it, unleſs the party can prove, that he delivered it to a magiſtrate to examine it. 1 *Haw.* 195.

And

And it hath been ruled, that the finding a libel on a bookſeller's ſhelf, is a publication of it by the bookſeller; and that it is no excuſe to ſay, that the ſervant took it into the ſhop without the maſter's knowledge; for the law preſumes the maſter to be acquainted with what the ſervant does. 1 *Seſſ. C.* 33. *K.* and *Dodd*, 10 *G.*

And it ſeems to be the better opinion, that he who firſt writes a libel dictated by another, is thereby guilty of making it, and conſequently puniſhable for the bare writing; for it was no libel, till it was reduced to writing: for the eſſence of a libel conſiſteth in the writing of it; for if a man ſpeak ſuch words, unleſs the words be put in writing, it is not a libel. 2 *Salk.* 419. 1 *Haw.* 195.

Alſo it hath been reſolved, that the ſending of a letter full of provoking language to another, without publiſhing it, is highly puniſhable, as manifeſtly tending to a diſturbance of the peace. 1 *Haw.* 195.

But it hath been reſolved, that he who barely reads a libel in the preſence of another, without knowing it before to be a libel, or who is only proved to have had a libel in his cuſtody, ſhall not in reſpect of any ſuch act be adjudged the publiſher of it. But the having in one's cuſtody a written copy of a libel publickly known, is an evidence of the publication of it. 1 *Haw.* 196.

III. How puniſhable.

There ſeemeth to be no doubt, but that the offenders may be condemned to pay ſuch fine, and alſo to ſuffer ſuch corporal puniſhment, as to the court in diſcretion ſhall ſeem proper, according to the heinouſneſs of the crime, and the circumſtances of the offender. 1 *Haw.* 196.

And it hath been adjudged, that libels, as having a direct and immediate tendency to a breach of the peace, are indictable before juſtices of the peace. 2 *Haw.* 40.

On an indictment ſetting forth the offence, *according to the tenor and to the effect following*, it was agreed by the court, that *to the effect following* had been naught, being vague and uſeleſs words; for the court muſt judge of the words themſelves: But the words, *according to the tenor*, do correct the defect; for they import the very words themſelves, for the *tenor* of a thing is the tranſcript and true copy of it, to which it may be compared: And therefore of words ſpoken there can be no tenor, becauſe there is no written original. 2 *Salk.* 417. 3 *Salk.* 225.

And it muſt be proved to be written or publiſhed, in the county laid in the indictment; all matters of crime being local. *Read.* Lib. *State Tr. V.* 3. 774, 775. *V.* 4. 672.

Indictment for a libel.

THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of*———*in the county of*——— *gentleman, not having God before his eyes, but moved by the inſtigation of the devil, and falſely and maliciouſly contriving and intending to bring our ſaid lord the king into hatred and infamy amongſt his ſubjects, and to move ſedition amongſt the ſubjects of our ſaid lord the king, did on the*——*day of*——— *in the*———*year of the reign of*———*with force and arms, at*———*aforeſaid, in the county aforeſaid, falſely, ſeditiouſly, and maliciouſly write and publiſh, and cauſe to be written and publiſhed, a certain falſe, ſeditious, and ſcandalous libel, intitled*———*In which ſaid libel are contained, among other things, divers falſe, ſeditious, ſcandalous, and malicious matters, according to the tenor following, to wit,*———*And in another part of the ſame libel are contained divers other falſe, ſeditious, ſcandalous, and malicious matters, according to the tenor following*———*to the evil example of all others in the like caſe offending, and againſt the peace of our ſaid lord the king, his crown and dignity.*

Linen cloth.

FOR the duties on linen cloth printed or ſtained; ſee title Exciſe.

For journeymen and other workmen imbezilling the materials of the linen manufacture, ſee title Servants.

Who may ſet up trades in the linen manufacture.

1. Any perſon, native or foreigner, may without paying any thing, in any place, privileged or unprivileged, corporate or not corporate, ſet up and exerciſe the occupation of breaking, hickling, or dreſſing of hemp or flax; as alſo for making or whitening of thread; as alſo of ſpinning, weaving, making, whitening, or bleaching any cloth made of hemp or flax only; as alſo the myſtery of making twine or nets for fiſhery, or of ſtoving of cordage; as alſo the trade of making tapeſtry hangings. 15 *C.* 2. *c.* 15. *ſ.* 2.

And all foreigners that ſhall uſe any the trades aforeſaid three years, ſhall (taking the oaths of allegiance and ſupremacy before two juſtices near unto their dwellings) enjoy all privileges as natural born ſubjects. *ſ.* 3.

2. Whereas certain evil diſpoſed perſons, by ſundry devices, ſtretch linen cloth both in length and breadth, and then with battledores or otherwiſe beat the ſame, caſting thereupon certain deceitful liquors mingled with chalk and other like things, whereby the cloth is made finer and thicker to the eye, but the threads are thereby looſened and made weak: If any perſon ſhall hereafter uſe the ſaid deceits, or do any other act with any linen cloth whereby it ſhall be made worſe, the ſaid cloth ſhall be forfeited, and the offender puniſhed by one month's impriſonment at the leaſt, and pay ſuch fine as the juſtices ſhall aſſeſs. 1 *El. c.* 12. *ſ.* 1. Deceitful making of linen cloth.

And the judges of aſſize, and juſtices of the peace or three of them (1 Q.) may hear and determine the ſame in their ſeſſions, by information, indictment, or upon the traverſe of any preſentment or indictment found before them. *ſ.* 2.

And if any perſon ſhall ſeize any ſuch deceitful linen cloth, he ſhall at the next ſeſſions, or before two juſtices (1 Q.) make due information of the offence and of the ſeizure, or elſe ſhall procure the offender to be indicted at the next ſeſſions, and ſhall alſo be bound by recognizance or obligation to purſue the ſame with effect, and to give evidence, and to pay the moiety of what he ſhall recover, to the ſheriff or other accountant to the uſe of the king. And the other half ſhall go to the informer or proſecutor. *ſ.* 3.

And the juſtices before whom the offence ſhall be tried, ſhall certify the ſame by eſtreat into the exchequer yearly at *Michaelmas* as they do other eſtreats, and thereupon the barons may make proceſs for ſo much thereof as appertaineth to the king, in like manner as for other fines. *ſ.* 4.

3. By the 18 *G.* 2. *c.* 27. Every perſon who ſhall, by day or night, feloniouſly ſteal any linen, fuſtian, calico, or cotton cloth; or cloth worked, woven, or made of any cotton or linen yarn mixed; or any thread, linen, or cotton yarn; linen or cotton tape, incle, filleting, laces, or any other linen, fuſtian, or cotton goods, laid to be printed, whitened, bowked, bleached, or dried, to the value of 10 s, or ſhall knowingly buy or receive any ſuch wares ſtolen, ſhall be guilty of felony without benefit of clergy. Deſtroying in the working, or ſtealing linen cloth.

And by the 4 *G* 3. *c.* 37. If any perſon ſhall, by day or night, break into any houſe, ſhop, cellar, vault, or other place or building, or by force enter into any houſe, ſhop, cellar, or vault, or other place or building, with intent to ſteal, cut, or deſtroy any linen yarn, or any linen cloth, or any manufacture of linen yarn belonging to any manufactory, or the looms, tools, or implements uſed therein; or ſhall wilfully or maliciouſly cut in pieces or deſtroy any ſuch goods, when expoſed either to bleach or dry; he ſhall be guilty of felony without benefit of clergy. *ſ.* 16.

Affixing counterfeit ſtamps on linen cloth.

4. If any perſon ſhall cauſe any ſtamps to be affixed to any foreign linens imported, in imitation of the ſtamps put on *Scotch* or *Iriſh* linens; he ſhall forfeit 5 l for each piece: Or if any perſon ſhall expoſe or pack up for ſale any foreign linens (knowing them to be ſo ſtamped) as the manufacture of *Scotland* or *Ireland*; he ſhall forfeit the ſame, and alſo 5 l for each piece. And if any perſon ſhall affix any counterfeit ſtamp on any linen of the manufacture of *Great Britain* or *Ireland*, in order to vend the ſame as linens duly ſtamped; he ſhall forfeit 5 l for each piece: And if any perſon ſhall expoſe or pack up for ſale, any ſuch linens, knowing them to be ſo ſtamped; he ſhall forfeit the ſame, and alſo 5 l for each piece. 17 *G.* 2. *c.* 30. *ſ.* 1.

And one juſtice may convict the offender on the oath of one witneſs, and may grant his warrant for diſtreſs and ſale; and for want of ſufficient diſtreſs, any juſtice, on proof thereof made on oath by the perſon executing the warrant, may commit him to gaol for ſix months, unleſs it be paid ſooner: Which penalty ſhall go to the informer, deducting 2 s in the pound to be paid to the conſtable who ſhall execute the warrant. *ſ.* 2.

Foreign cambricks and lawns.

5. By the 18 *G.* 2. *c.* 36. and 21 *G.* 2. *c.* 26. and 32 *G.* 2. *c.* 32. and 7 *G.* 3. *c.* 43. there are many reſtrictions relating to the *importation* of foreign cambricks and French lawns, which not falling under the cognizance of juſtices of the peace, are here omitted.

Concerning the *wearing* of the ſaid (foreign) cambricks or French lawns, it is enacted, that no perſon ſhall wear any cambrick or French lawn, on pain of 5 l to the informer, on conviction by oath of one witneſs before one juſtice; who ſhall, on information on oath in ſix days after the offence committed, ſummon the party, and on his appearance or contempt proceed to examine the matter, and on due proof thereof made, either by confeſſion, or oath of one witneſs, hear and determine the ſame, and cauſe the

the penalty to be levied by diſtreſs. The party aggrieved may appeal to the next ſeſſions, giving ſix days notice. 18 *G.* 2. *c.* 36. *ſ.* 1.

And if any perſon ſhall *ſell* or expoſe to ſale any cambrick or French lawns, made or not made up (except for exportation); he ſhall forfeit 5 l in like manner. 18 *G.* 2. *c.* 36. *ſ.* 2.

But if the wearer ſhall, on oath before a juſtice, diſcover the ſeller; he ſhall be diſcharged, and the ſeller only ſhall be liable. 18 *G.* 2. *c.* 36. *ſ.* 3. 21 *G.* 2. *c.* 26. *ſ.* 2.

And where ſuch wearer ſhall be excuſed by diſcovering the vender, the penalty on the vender ſhall go to the perſon who informed againſt the wearer. 21 *G.* 2. *c.* 26. *ſ.* 3.

And any milliner or other perſon, who ſhall for hire make up any cambrick or French lawn for any wearing apparel, ſhall be liable to the penalties inflicted on the vender. 21 *G.* 2. *c.* 26. *ſ.* 5.

And where an offender is a feme covert, living with her huſband, the penalty ſhall be levied on the goods of the huſband. 21 *G.* 2. *c.* 26. *ſ.* 4.

6. By the 4 *G.* 3. *c.* 37. and 7 *G.* 3. *c.* 43. there are divers regulations concerning the making and ſtamping cambricks and lawns made in *England*; and if any perſon ſhall forge and counterfeit ſuch ſtamp, he ſhall be guilty of felony without benefit of clergy. Cambricks and lawns made in England.

Ling. Burning of it. See **Burning**.

London.

THERE are many acts of parliament relating to the city of *London* and other places within the bills of mortality, which being only local are not within the compaſs of this work; and which would require a diſtinct volume of themſelves. Sir *John Fielding*, in his "Extract "of the penal laws relating to the peace and good or"der of the city of *London*," hath collected theſe partly, amongſt other more general laws, for the inſtruction of ignorant offenders, and admonition of the unwary. It would be a work of further ſervice to the metropolis, if ſome perſon would undertake a compleat collection and digeſt of all the laws relating to the cities of *London* and *Weſtminſter*,

minſter, and other places within the bills; out of which might be ſelected again, ſuch only as concern the office of a juſtice of the peace in particular.

Lord's day.

Reſorting to church on the Lord's day.

1. ALL perſons, not having a reaſonable excuſe, ſhall reſort to their pariſh church or chapel (or to ſome congregation of religious worſhip allowed by the toleration act) on every *ſunday*; on pain of puniſhment by the cenſures of the church, or of forfeiting 1 s to the poor for every offence. 1 *El. c.* 2. *ſ.* 14, 24. To be levied by the churchwardens by diſtreſs, by warrant of one juſtice. 3 *J. c.* 4. *ſ.* 27, 28.

Sports on the Lord's day.

2. King *James* the firſt, in 1618, publickly declared to his ſubjects, in what was called the book of ſports, theſe games following to be *lawful*, *viz.* dancing, archery, leaping, vaulting, maygames, whitſun ales, and morris dances; and did command that no ſuch honeſt mirth or recreation ſhould be forbidden to his ſubjects on *Sunday* after evening ſervice: But reſtraining all recuſants from this liberty; and commanding each pariſh to uſe theſe recreations by itſelf; and prohibiting all *unlawful* games, bear baiting, bull baiting, interludes, and bowling by the meaner ſort. *Dalt. c.* 46.

After which it was enacted by the ſtatute of the 1 *C. c.* 1. that there ſhall be no concourſe of people *out of their own pariſhes* on the Lord's day, for any ſport or paſtimes; nor any bear baiting, bull baiting, interludes, common plays, or other *unlawful* exerciſes and paſtimes uſed by any perſons *within their own pariſhes*; on pain that every offender, being convicted within a month after the offence, before one juſtice on view, or confeſſion, or oath of one witneſs, ſhall forfeit for every offence 3s 4d to the poor, to be levied by the conſtable and churchwardens by diſtreſs: in default of diſtreſs, the party to be ſet publickly in the ſtocks for three hours.

Places of entertainment on the Lord's day.

3. Within *London* or *Weſtminſter*, or in the neighbourhood thereof, any houſe opened upon the Lord's day for public entertainment, amuſement, or debate, on religious or any other ſubjects, and to which perſons ſhall be admitted by the payment of money, or by tickets ſold for money, ſhall be deemed a diſorderly houſe; and the keeper thereof ſhall forfeit 200 l, the perſon managing or conducting the entertainment or acting as chairman or moderator 100 l, and every door-keeper or ſervant who ſhall

ſhall collect money or deliver out tickets ſold, to him who ſhall ſue. 21 *G.* 3. *c.* 49.

Exerciſing worldly callings on the Lord's day.

4. By the 1 *J.* *c.* 22. No *ſhoemaker* ſhall ſhew, to the intent to put to ſale, any ſhoes, boots, buſkins, ſtartops, ſlippers, or pantofles, upon the *Sunday*; on pain of 3s 4d a pair, and the value thereof: to be recovered at the aſſizes, ſeſſions, or leet; one third to the king, one third to him who ſhall ſue, and one third to the town or lord of the leet. *ſ.* 28, 46, 50.

And by the 3 *C.* *c.* 1. No *carrier* with any horſe or horſes, nor waggonmen with any waggon or waggons, nor carmen with any cart or carts, nor wainmen with any wain or wains, nor *drovers* with any cattle, ſhall by themſelves, or any other, travel on the Lord's day, on pain of 20s; or if any *butcher*, by himſelf, or any other for him, with his privity and conſent, ſhall kill or ſell any victual on the Lord's day, he ſhall forfeit 6s 8d. The conviction to be in ſix months before one juſtice, or mayor, on view, or confeſſion, or oath of two witneſſes; to be levied by the conſtable or churchwarden, by diſtreſs; or to be recovered in any court of record, in any city or town corporate, before the juſtices in ſeſſions; to be applied to the uſe of the poor, except that the juſtice may reward the informer or proſecutor with part of the forfeiture, not exceeding one third part.

And by the 29 *C.* 2. *c.* 7. it is further enacted, that no *drover*, *horſe courſer*, *waggoner*, *butcher*, *higler*, or any of their ſervants, ſhall travel, or come to his inn or lodging on the Lord's day, on pain of 20s; and in general, that no *tradeſman*, *artificer*, *workman*, *labourer*, *or other perſon*, ſhall do or exerciſe any worldly labour, buſineſs, or work of their ordinary calling on the Lord's day; (except works of neceſſity and charity; and except dreſſing of meat in families, and dreſſing and ſelling of meat in inns, or cooks ſhops, or victualling houſes, for ſuch as cannot otherwiſe be provided; and by the 9 *Ann.* *c.* 23. *ſ.* 20. except licenſed hackney coachmen and chairmen within the bills of mortality;) on pain of every offender above 14 years of age forfeiting 5s: and alſo that no perſon ſhall publickly *cry*, *ſhew forth*, *or expoſe to ſale*, any wares, merchandizes, fruit, herbs, goods or chattels whatſoever, on the Lord's day, (except crying and ſelling of milk, before nine in the morning and after four in the afternoon; and except mackarel, which may be ſold on *Sundays*, before or after divine ſervice, by the 10 & 11 *W.* *c.* 24. *ſ.* 14.) on pain of forfeiting the ſame; and alſo that no perſon ſhall uſe, employ, or travel on the Lord's day, with any

any *boat*, wherry, lighter, or barge (unleſs allowed by a juſtice of peace, on extraordinary occaſion; and except 40 watermen who may ply on the *Thames* on *Sundays* betwixt *Vauxhall* and *Limehouſe*, by the 11 & 12 *W. c.* 21. *ſ.* 13.) on pain of 5 s: and if any perſon offending in any of the premiſſes, ſhall thereof be convicted in ten days after the offence, before one juſtice, on view, or confeſſion, or oath of one witneſs, the juſtice ſhall give warrant to the conſtables or churchwardens, to ſeize the goods cried, ſhewed forth, or put to ſale, and to ſell the ſame; and to levy the other forfeitures by diſtreſs; to the uſe of the poor, except that the juſtice may out of the ſame reward the informer with any ſum not exceeding one third part. And for want of diſtreſs, the offender ſhall be ſet publickly in the ſtocks for two hours.

By the 2 *G.* 3. *c.* 15. *Fiſh* carriages ſhall be allowed to paſs on Sundays and holidays, whether laden or returning empty. *ſ.* 7.

E. 32 *G.* 2. *K.* and *Cox.* An information was moved for againſt a juſtice of the peace, for refuſing to receive an information againſt a *baker*, for exerciſing his trade on a Sunday, contrary to the aforeſaid ſtatute of the 29 *C.* 2. *c.* 7. On ſhewing cauſe, it appeared, that the charge againſt the baker was, not for baking *bread*, but for baking puddings, and pies, and other ſuch things for dinner. And the court were of opinion, that this was not an offence within the act; but falls within the exception of works of neceſſity and charity, and within the equity of the proviſo as being a cook's ſhop; there being the ſame reaſon that the baker ſhould bake for others, as that a cook ſhould roaſt and boil for them: And it is better that one baker and his men ſhould ſtay at home, than many families and ſervants. And the rule to ſhew cauſe was diſcharged, with coſts. *Burrow, Mansfield.* 785.

T. 17 *G.* 3. *Crepps* and *Durden.* The plaintiff was convicted for ſelling ſmall hot loaves of bread on the ſame day, being Sunday, by four ſeparate convictions, in the ſum of 5 s each. It was objected, that there can be but one offence, attended with one ſingle penalty, on one and the ſame day. By lord *Mansfield:* The true conſtruction of the act is, exerciſing his ordinary trade upon the Lord's day, and that without any fraction of a day, hours, or minutes. It is one intire offence, whether longer or ſhorter in point of duration, or whether it conſiſt of one or a number of particular acts, makes no difference. The penalty incurred is 5 s. There is no idea conveyed by the act, that, if a taylor ſews on the Lord's day, every ſtitch he takes is a ſeparate offence;

or,

or, if a ſhoemaker or carpenter work for different cuſtomers at different times on the ſame Sunday, that thoſe are ſo many ſeparate and diſtinct offences. There can be but one intire offence, on one and the ſame day. And this is even a much ſtronger caſe than that upon the game laws. Killing a ſingle hare is an offence, but the killing of ten more in the ſame day will not multiply the offence, or the penalty impoſed by the ſtatute for killing one. Here, repeated offences are not the object which the legiſlature had in view in making the ſtatute; but ſingly, to puniſh a man for exerciſing his ordinary calling on the Lord's day. *Cowper*. 640.

Killing game on the Lord's day.

5. By the 13 *G*. 3. *c*. 80. If any perſon ſhall, on a Sunday, take, kill, or deſtroy, or uſe any gun, dog, ſnare, net, or other engine for taking, killing or deſtroying, any hare, pheaſant, partridge, moor game, heath game, or grouſe; he ſhall, on conviction on the oath of one witneſs before one juſtice, forfeit for the firſt offence not exceeding 20l nor leſs than 10l; for the ſecond offence, not exceeding 30l nor leſs than 20l; for the third and every other offence 50l, to be recovered upon indictment at the ſeſſions: as is ſet forth more particularly under the title *Game*.

Serving proceſs on the Lord's day.

6. No perſon upon the Lord's day, ſhall ſerve or execute any writ, proceſs, warrant, order, judgment, or decree (except in caſes of treaſon, felony, or breach of the peace), but the ſervice thereof ſhall be void; and the perſon ſerving the ſame ſhall be as liable to anſwer damages to the party grieved, as if he had done the ſame without any writ, proceſs, warrant, order, judgment, or decree. 29 *C*. 2. *c*. 7. *ſ*. 6.

But this doth not extend to eccleſiaſtical proceſs, as citations, or excommunications. *Gibſ*. 271.

A juſtice iſſued a warrant to the conſtable, to make a perſon find ſureties for his *good behaviour*: the conſtable executed the warrant on a *Sunday*, and he was juſtified by the court; who reſolved, that a warrant for the good behaviour is a warrant for the *peace*, and more; and that this ſtatute is to be favourably interpreted for the peace. *Raym*. 250.

Robbery on the Lord's day.

7. No hundred ſhall be anſwerable for any robbery on the Lord's day: Nevertheleſs the inhabitants ſhall make hue and cry after the offenders, on pain of forfeiting to the king as much money as might have been recovered by the party robbed againſt the hundred, if he had been robbed on any other day. 29 *C*. 2. *c*. 7. *ſ*. 5.

Warrant

Warrant on the 3 *C.* *c.* 1. and 29 *C.* 2. *c.* 7. to levy 20s on a carrier for travelling on the Lord's day; which ſame will do, *mutatis mutandis*, for the other penalties under this title.

Weſtmorland. { To the conſtable of ——— in the ſaid county, and to the churchwardens of the pariſh of —— in the ſaid county.

FORASMUCH *as* A. O. *of* ——— *in the county of* ——— *carrier, is duly convicted before me* J. P. *eſquire, one of his majeſty's juſtices aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, for that he the ſaid* A. O. *on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *being the Lord's day, commonly called* Sunday, *with his horſes into and through the ſaid pariſh of* —— *did travel, contrary to the ſtatutes in that caſe made and provided, whereby he hath forfeited the ſum of* 20s *of lawful money of* England; *theſe are therefore to command you forthwith to levy the ſaid ſum of* 20s, *by diſtraining the goods and chattels of him the ſaid* A. O. *And if within the ſpace of* [*five*] *days next after ſuch diſtreſs by you taken, the ſaid ſum ſhall not be paid, together with the reaſonable charges of taking and keeping the ſame, that then you do ſell the ſaid goods and chattels ſo by you diſtrained, and out of the money ariſing by ſuch ſale, that you do pay the ſum of* 6s 8d, *part of the ſaid ſum of* 20s, *to* A. I. *of* ——— *yeoman, who informed me of the ſaid offence, and that you ſee the remaining ſum of* 13s 4d *employed to the uſe of the poor of your ſaid pariſh of* —— *returning to him the ſaid* A. O. *the overplus upon demand, the reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs, being firſt deducted. And you are to certify to me, with the return of this precept, what you ſhall have done in the execution thereof. Herein fail you not. Given under my hand and ſeal at* ——— *in the ſaid county, the* —— *day of* ———.

Lotteries. See Gaming.

Low wines. See Exciſe.

Lunaticks.

1. NON *compos mentis* is of four kinds; Who.
First, Ideots; who are of *non ſane memory* from their nativity, by a perpetual infirmity.

Secondly, Thoſe that loſe their memory and underſtanding by the viſitation of God, as by ſickneſs, or other accident.

Thirdly, Lunaticks; who have ſometimes their underſtanding, and ſometimes not.

Fourthly, Drunkards; who by their own vicious act for a time deprive themſelves of their memory and underſtanding. 1 *Inſt.* 247.

2. He who incites a madman to do a murder, or other crime, is a principal offender, and as much puniſhable as if he had done it himſelf. 1 *Haw.* 2. Inciting him to commit a crime.

3. But ideots and lunaticks, who are under a natural diſability of diſtinguiſhing between good and evil, are not puniſhable by any criminal proſecution. 1 *Haw.* 2. Not puniſhable for criminal offences.

Yet drunkards ſhall have no privilege by their want of ſound mind; but ſhall have the ſame judgment as if they were in their right ſenſes. 1 *Inſt.* 247. 1 *Haw.* 2. 1 *H. H.* 32.

4. But if a perſon, who wants diſcretion, commit a treſpaſs againſt the perſon or poſſeſſion of another; he ſhall be compelled in a civil action to give ſatisfaction for the damage. 1 *Haw.* 2. Puniſhable for civil offences.

5. If one who hath committed a capital offence become *non compos* before conviction, he ſhall not be arraigned; and if after conviction, he ſhall not be executed. *Hale's Pl.* 10. 1 *Haw.* 2. Becoming non compos before trial.

6. By the common law, if it be doubtful whether a criminal, who at his trial in appearance is a lunatick, be ſuch in truth or not, it ſhall be tried by an inqueſt of office, to be returned by the ſheriff; and if it be found by them, that the party only feigns himſelf mad, and he ſtill refuſe to anſwer, he ſhall be dealt with as if he had confeſſed the indictment. 1 *Haw.* 2. How tried whether he is non compos.

7. An ideot cannot bring an appeal. 1 *Haw.* 162. Whether he may bring an appeal.

8. Neither can he be an approver; becauſe he can neither take the oath in that caſe required, nor wage battle. 3 *Inſt.* 129. Whether he may be an approver.

9. Any perſon may juſtify confining and beating his friend being mad, in ſuch manner as is proper in ſuch circumſtances. 1 *Haw.* 130. Friends reſtraining him.

10. By

Overſeers reſtraining him.

10. By the 17 *G.* 2. *c.* 5. it is enacted, that whereas there are ſometimes perſons, who by lunacy, or otherwiſe, are furiouſly mad, or are ſo far diſordered in their ſenſes that they may be dangerous to be permitted to go abroad, it ſhall therefore be lawful for two or more juſtices where ſuch lunatick or mad perſon ſhall be found, by warrant directed to the conſtables, churchwardens, and overſeers of the place, or ſome of them, to cauſe ſuch perſon to be apprehended, and kept ſafely locked up in ſome ſecure place, within the county or precinct, as ſuch juſtices ſhall under their hands and ſeals direct and appoint, and (if ſuch juſtices find it neceſſary) to be there chained, if the ſettlement of ſuch perſon ſhall be within ſuch county or precinct.

And if ſuch ſettlement ſhall not be there, then ſuch perſon ſhall be ſent to his ſettlement by a vagrant paſs *(mutatis mutandis)*; and ſhall be locked up or chained by warrant of two juſtices of the county or precinct, to which ſuch perſon is ſo ſent, in manner aforeſaid;

And the reaſonable charges of removing, and of keeping, maintaining, and curing ſuch perſons, during ſuch reſtraint, (which ſhall be during ſuch time only as ſuch lunacy or madneſs ſhall continue), ſhall be ſatisfied and paid (ſuch charges being firſt proved upon oath) by order of two juſtices, directing the churchwardens or overſeers, where any goods, chattels, lands or tenements of ſuch perſon ſhall be, to ſeize and ſell ſo much of the goods and chattels, or receive ſo much of the annual rents of the lands, as is neceſſary to pay the ſame; and to account for what is ſo ſeized, ſold, or received, to the next quarter ſeſſions: But if ſuch perſon hath not an eſtate to ſatisfy the ſame, over and above what ſhall be ſufficient to maintain his family, then ſuch charges ſhall be paid by the pariſh, town, or place to which ſuch perſon belongs, by order of two juſtices, directed to the churchwardens or overſeers for that purpoſe. *ſ.* 20.

Provided that any perſon aggrieved by any act of ſuch juſtices out of ſeſſions may appeal to the next ſeſſions, giving reaſonable notice; whoſe order therein ſhall be final. *ſ.* 26.

But nothing herein ſhall reſtrain or abridge the power of the king, or lord chancellor; nor ſhall reſtrain or prevent any friend from taking them under their own care and protection. *ſ.* 21.

Houſes for reception of lunaticks to be licenſed.

11. By the 14 *G.* 3. *c.* 49. (which is enacted to be in force for 5 years, and by the 19 *G.* 3. *c.* 15. is continued for 7 years further) No perſon, on pain of 500 l, ſhall entertain

entertain or confine, in any houſe kept for the reception of lunaticks, more than one lunatick at one time, without a licence to be granted yearly by the college of phyſicians within London and Weſtminſter and ſeven miles thereof and within the county of Middleſex, and elſewhere by the juſtices in ſeſſions.

12. The king is the general guardian of ideots and lunaticks. 17 *Ed.* 2. *ſt.* 1. *c.* 9, 10. — King the guardian of lunaticks.

13. A perſon of *non ſane* memory ſhall not avoid his own act, by reaſon of this defect; but his heir or executor may. 4 *Co. Beverly's* caſe. — Whether he may avoid his own act.

14. If an ideot, or a lunatick not being in a lucid interval, takes a wife, the marriage is void; for conſent is neceſſary to make a marriage effectual, and neither of them is capable of conſenting to any thing. But as it might be difficult to prove the exact ſtate of the party's mind at the actual celebration of the nuptials, therefore it is provided by the 15 *G.* 2. *c.* 30. that the marriage of lunaticks and perſons under phrenzies (if found lunaticks under a commiſſion, or committed to the care of truſtees by any act of parliament) before they are declared of ſound mind by the lord chancellor or the majority of ſuch truſtees, ſhall be totally void. 1 *Black.* 438. — Whether he may conſent to marriage.

15. A lunatick may ſurrender a leaſe in the court of chancery or exchequer, in order to renew the ſame. 29 *G.* 2. *c.* 31. — In what manner he may ſurrender or accept a ſurrender of leaſes.

Alſo, by direction of the lord chancellor, he may accept a ſurrender of ſuch leaſe, and execute a new one. 11 *G.* 3. *c.* 20.

16. To make a will, it is not ſufficient that the teſtator have memory to anſwer to familiar and uſual queſtions, but he ought to have a diſpoſing memory, ſo as to be able to make a diſpoſition of his eſtate, with underſtanding and reaſon. 6 *Co.* 23. — Whether he may make a will.

Madder.

IF any perſon ſhall ſteal and take away, or wilfully and maliciouſly pull up or deſtroy any madder roots; and ſhall be convicted thereof before one juſtice, by confeſſion or oath of one witneſs; he ſhall, for the firſt offence, pay to the owner ſuch ſatisfaction for damages and in ſuch time as the juſtice ſhall appoint, and moreover ſhall pay down upon the conviction to the overſeer for the uſe of

the poor ſuch ſum, not exceeding 10 s, as to the juſtice ſhall ſeem meet; and if he ſhall not make ſuch recompence, and alſo pay ſuch ſum to the uſe of the poor, the ſaid juſtice ſhall commit him to the houſe of correction for any ſpace not exceeding one month, or may order him to be whipped by the conſtable or other officer, as to the ſaid juſtice ſhall ſeem meet: and for the ſecond offence, ſhall by ſuch juſtice be committed to the houſe of correction for three months. Proſecution to be commenced within thirty days. 31 *G.* 2. *c.* 35. *ſ.* 5, 6.

Madmen. See **Lunaticks.**

Maim.

1. MAIM is ſuch a hurt of any part of a man's body, whereby he is rendered leſs able in fighting, either to defend himſelf, or annoy his adverſary. 1 *Haw.* 111.

2. For the members of every ſubject are under the ſafeguard and protection of the law, to the end a man may ſerve his king and country, when occaſion ſhall be offered: and therefore a perſon who maims himſelf, that he may have the more colour to beg, may be indicted and fined. 1 *Inſt.* 127.

And by the like reaſon, a perſon who diſables himſelf, that he may not be impreſſed for a ſoldier.

3. The cutting off, or diſabling, or weakening a man's hand or finger, or ſtriking out his eye, or foretooth, or caſtrating him, are ſaid to be maims, but the cutting off his ear, or noſe, were not eſteemed maims at the common law, becauſe they do not weaken but only diſfigure him. 1 *Haw.* 111, 112.

4. It is ſaid, that anciently caſtration was puniſhed with death; and other maims with the loſs of member for member: but afterwards no maim was puniſhed in any caſe with the loſs of life or member, but only with fine and impriſonment. 1 *Haw.* 111, 112.

But now by the 22 & 23 *C.* 2. *c.* 1. (which is called the *Coventry* act, becauſe it was made on the occaſion of Sir *John Coventry*'s being aſſaulted in the ſtreet, and his noſe ſlit) If any perſon, on purpoſe, and of malice forethought, and by laying in wait, ſhall unlawfully cut out or diſable the tongue, put out an eye, ſlit the noſe, cut off

off a noſe or lip, or cut off or diſable any limb or member of any ſubject, with intention in ſo doing to maim or diſfigure him; the perſon ſo offending, his counſellors, aiders, and abettors (knowing of and privy to the offence) ſhall be guilty of felony without benefit of clergy; but not to work corruption of blood.

5. If a man attack another with intent to murder him, and he does not murder, but only maim him; the offence is nevertheleſs within the ſtatute. 1 *Haw.* 112.

The caſe was, one Mr. *Coke* a gentleman of *Suffolk*, and one *Woodburn* a labourer, were indicted, in 1722, *Coke* for hiring and abetting *Woodburn*, and *Woodburn* for the actual fact of ſlitting the noſe of Mr. *Criſpe*. The murder of *Criſpe* was intended, and he was left for dead, being terribly hacked and diſfigured with a hedge bill; but he recovered. Now the bare intent to murder is no felony: but to diſfigure, with an intent to diſfigure, is made ſo by this ſtatute; on which they were therefore indicted. And *Coke* reſted his defence upon this point, that the aſſault was not committed with an intent to diſfigure, but with an intent to murder, and therefore not within the ſtatute. But the court held, that if a man attack another to murder him with ſuch an inſtrument as a hedge bill, which cannot but indanger the diſfiguring him; and in ſuch attack happens not to kill, but only to diſfigure him; he may be indicted on this ſtatute: and it ſhall be left to the jury whether it was not a deſign to murder by diſfiguring, and conſequently a malicious intent to diſfigure as well as to murder. Accordingly the jury found them guilty of ſuch previous intent to diſfigure, in order to effect their principal intent to murder. And they were both condemned and executed. 4 *Black.* 207.

6. If the maim comes not within any of the deſcriptions in the act, yet it is indictable at the common law, and may be puniſhed by fine and impriſonment: Or an appeal may be brought for it at the common law; in which the party injured ſhall recover his damages: or he may bring an action of treſpaſs; which kind of action hath now generally ſucceeded into the place of of appeals in ſmaller offences not capital. 2 *Haw.* 157—160.

7. It doth not ſeem, that in maiming there may be acceſſaries after the fact. 2 *Haw.* 311.

For maiming of cattle, ſee title **Cattle.**

Mainprize. See **Bail.**

Maintenance.

BUYING of titles belongeth not to this place, but is treated of under a title of its own.

I. Of maintenance in general.
II. Of champerty in particular.
III. Of embracery in particular.

I. Of maintenance in general.

Concerning which I will ſhew,

i. What it is
ii. How puniſhable by the common law.
iii. How by ſtatute.

i. What it is.

1. Maintenance (*manu tenere*) *is an unlawful taking in hand or upholding of quarrels or ſuits, to the diſturbance or hindrance of common right.* 1 Haw. 249.

2. And it is twofold:

One in the *country*; as were one aſſiſts another in his pretenſions to certain lands, by taking or holding the poſſeſſion of them for him by force or ſubtilty; or where one ſtirs up quarrels, and ſuits in the country, in relation to matters wherein he is no way concerned: And this kind of maintenance is puniſhable at the king's ſuit by fine and impriſonment, whether the matter in diſpute any way depended in plea or not; but it is ſaid not to be actionable. 1 *Haw.* 249.

Another in the *courts of juſtice*; where one officiouſly intermeddles in a ſuit depending in any ſuch court, which no way belongs to him, by aſſiſting either party with money or otherwiſe, in the proſecution or defence of any ſuch ſuit. 1 *Haw.* 249.

3. Of this ſecond kind of maintenance, there are three ſpecies;

Firſt, where one maintains another, without any contract to have part of the thing in ſuit; which generally goes under the common name of *maintenance*.

Secondly, where one maintains one ſide to have part of the thing in ſuit; which is called *champerty*.

Thirdly, where one laboureth a jury; which is called *embracery*. 1 Haw. 249.

4. But

4. But it ſeemeth to be agreed, that wherever any perſons claim a common intereſt in the ſame thing, as in a way, churchyard, or common, by the ſame title, they may maintain one another in a ſuit relating to the ſame. 1 *Haw.* 252.

5. Alſo, that whoever is any way of kin or affinity to the party, may counſel and aſſiſt him, but that he cannot juſtify the laying out any of his own money in the cauſe unleſs he be either father, or ſon, or heir apparent. 1 *Haw.* 252.

6. Alſo, that any one in charity may lawfully give money to a poor man, to enable him to carry on his ſuit. 1 *Haw.* 253.

ii. How puniſhable by the common law.

It ſeemeth that all maintenance is not only *malum prohibitum* by ſtatute, but is alſo *malum in ſe*, and ſtrictly prohibited by the common law, as having a manifeſt tendency to oppreſſion; and therefore it is ſaid, that all offenders of this kind are not only liable to an action of maintenance at the ſuit of the party grieved, wherein they ſhall render ſuch damages as ſhall be anſwerable to the injury done to the plaintiff, but alſo that they may be indicted as offenders againſt publick juſtice, and adjudged thereupon to ſuch fine and impriſonment as ſhall be agreeable to the circumſtances of the offence. Alſo it ſeemeth, that a court of record may commit a man for an act of maintenance done in the face of the court. 2 *Inſt.* 212. 1 *Haw.* 255.

iii. How by ſtatute.

1. By the 1 Ed. 3. ſt. 2. c. 14. *No perſon ſhall take upon him to maintain quarrels, nor parties in the country, to the diſturbance of the common law.*

2. And by the 20 Ed. 3. c. 4. *None ſhall take in hand quarrels other than their own, nor the ſame maintain, by them nor by other, for gift, promiſe, amity, favour, doubt, fear, nor other cauſe, in diſturbance of law, and hindrance of right.*

3. And by the 1 R. 2. c. 4. *None ſhall take or ſuſtain any quarrel by maintenance in the country, nor elſewhere, on pain, if he is a great officer, as the king by advice of the lords ſhall ordain; if he is a leſſer officer, he ſhall forfeit his office, and be impriſoned and ranſomed at the king's will; and*

all other perſons, on pain of impriſonment, and ranſom at the king's will.

4. And by the 32 H. 8. c. 9. *No perſon ſhall unlawfully maintain, or procure any unlawful maintenance, in any action, demand, or complaint, in any court having power to hold plea of lands; nor ſhall unlawfully retain any perſon for maintenance of any plea, to the diſturbance or hindrance of juſtice; on pain of* 10*l, half to the king, and half to him that ſhall ſue within one year.*

Unlawfully maintain] It ſeemeth that in an information on this ſtatute, it is not ſufficient to ſay, that the defendant maintained the party, without adding that he did it *unlawfully*. 1 Haw. 256.

Having power to hold plea of lands] It is ſaid to have been adjudged, that maintenance of a ſuit in a ſpiritual court, is neither within this nor any other ſtatute concerning maintenance. 1 *Haw.* 256.

To hold plea] It hath been holden that in an information on this ſtatute, it is neceſſary to ſhew, that a plea was depending; and therefore that is not ſufficient to ſay that a bill was exhibited. 1 *Haw.* 256.

II. Of champerty in particular.

i. What it is.

ii. How puniſhable by the common law.

iii. How by ſtatute.

i. What it is.

Champerty (from *campi parte*) is the *unlawful maintenance of a ſuit, in conſideration of ſome bargain to have part of the lands or thing in diſpute, or part of the gains.* 1 Haw. 156. 33 Ed. 1. ſt. 2.

Every champerty is maintenance, but every maintenance is not champerty; for champerty is but a *ſpecies* of maintenance which is the *genus*. 2 Inſt. 208.

ii. How puniſhable by the common law.

Champerty was an offence at the common law, and as ſuch is puniſhable in like manner as hath been expreſſed in treating of maintenance in general. 2 *Inſt.* 208.

iii. How

iii. How by ſtatute.

1. By the 3 Ed. 1. c. 25. *No officer of the king, by himſelf, nor by other, ſhall maintain pleas, ſuits, or other matters hanging in the king's courts, for lands, tenements, or other things for to have part or profit thereof, by covenant made between them; and he that doth ſhall be puniſhed at the king's pleaſure.*

By covenant made] That is, by agreement either by word or writing; for albeit in the common ſenſe, a covenant is taken for an agreement by writing, yet in a larger ſenſe it is taken (as it is here) for an agreement by writing or by word. 2 *Inſt.* 209.

2. And by the 28 Ed. 1. c. 11. *No perſon whatſoever, for to have part of the thing in plea, ſhall take upon him the buſineſs that is in ſuit, nor ſhall any upon ſuch covenant give up his right to another; on pain that the taker ſhall forfeit to the king the value of the part he hath purchaſed for ſuch maintenance. But no perſon ſhall be prohibited hereby to have counſel of pleaders, or of men learned in the law, for their fee; or of his parents and next friends.*

3. And by the 33 Ed. 1. ſt. 3. *Any perſon who ſhall take for maintenance, or the like bargain, any ſuit or plea againſt another; he, and alſo they who conſent thereunto, ſhall be impriſoned three years, and make fine at the king's pleaſure.*

4. And by the 1 R. 2. c. 9. *A feoffment of lands, or gift of goods, for maintenance, ſhall be void, and the perſon diſſeiſed ſhall recover the lands againſt the firſt diſſeiſors, with double damages, without having any regard to ſuch alienations.*

Shall be void] But it is ſaid that it ſhall only be void with regard to him that hath right, and not between the feoffor and feoffee. 1 *Inſt.* 369.

5. And by the 31 El. c. 5. *The offence of champerty may be laid in any county, at the pleaſure of the informer.* ſ. 4.

III. Of embracery in particular.

i. What it is.

ii. How puniſhable by the common law.

iii. How by ſtatute.

i. What it is.

1. It ſeems clear, *that any attempt whatſoever to corrupt, or influence, or inſtruct a jury, or any way to incline them to be more favourable to the one ſide than to the other, by money, promiſes, letters, threats, or perſuaſions, is a proper act of embracery*, whether the juror on whom ſuch attempt is made give any verdict or not, or whether the verdict given be true or falſe. 1 *Haw.* 259.

2. And the law ſo far abhors all corruption of this kind, that it prohibits every thing which has the leaſt tendency to it, what ſpecious pretence ſoever it may be covered with, and therefore it will not ſuffer a mere ſtranger ſo much as to labour a juror to appear and act according to his conſcience. 1 *Haw.* 259.

3. But any perſon who may juſtify any other act of maintenance, may ſafely labour a juror to appear and give a verdict according to his conſcience; but no one whatſoever can juſtify the labouring a juror not to appear. 1 *Haw.* 260.

ii. How puniſhable by the common law.

There is no doubt, but that offences of this kind, do ſubject the offender either to an indictment or action, in the ſame manner as all other kinds of unlawful maintenance do by the common law. 1 *Haw.* 260.

iii. How by ſtatute.

1. By the 32 H. 8. c. 9. *No perſon ſhall embrace any jurors on pain of* 10*l*, *half to the king, and half to him that ſhall ſue within a year.* ſ. 3, 6.

2. And by the 38 Ed. 3. ſt. 1. c. 12. *If any juror ſhall take any thing to give his verdict; both he, and the embracer, ſhall forfeit ten times as much, half to the king, and half to him that ſhall ſue.*

Upon which ſtatute is founded the writ of *Decies tantum.*

Indictment for maintenance.

THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of* ——— *in the county aforeſaid, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *with force and arms at* ——— *aforeſaid, in the county aforeſaid, did unjuſtly and unlawfully maintain and uphold a certain ſuit which was then depending in the court of our ſaid lord the king, before the king himſelf, between* A. P. *plaintiff, and* A. D. *defendant, in a plea of debt, on*

the behalf of the ſaid A. P. *againſt the ſaid* A. D. *contrary to the form of the ſtatute in ſuch caſe made and provided, and to the manifeſt hindrance and diſturbance of juſtice, and in contempt of our ſaid lord the king, and to the great damage of the ſaid* A. D. *and againſt the peace our ſaid lord the king, his crown and dignity.*

Malt. See Exciſe.

Man (Iſland).

1. BY the 5 *G.* 3. *c.* 26. For the ſum of 70,000 l paid to John duke of Athol and Charlotte his wife, baroneſs Strange, the iſland, caſtle, pele, and lordſhip of Man, and all the iſlands and lordſhips thereunto appertaining, with all rights, juriſdictions, and intereſts in and over the ſame, are veſted unalienably in the crown; reſerving to the ſaid duke and ducheſs their landed property, with all their rights in and over the ſoil as lords of the manor, with all courts baron, rents, ſervices, and other incidents to ſuch courts belonging, waſtes, commons, and other lands, inland waters, fiſheries, mills, mines, minerals, quarries, waifs, eſtrays, deodands, wrecks, together with the patronage of the biſhoprick, and of the other eccleſiaſtical benefices to which at the time of the ſaid purchaſe they were intitled. Purchaſe of the Iſle of Man.

In purſuance whereof, divers regulations were made by ſeveral ſtatutes, reſpecting the trade and manufactures of the ſaid iſland, and for preventing the clandeſtine exportation of goods from thence into this kingdom, which was the grievance intended to be remedied by the ſaid purchaſe. Particularly,

2. By the 5 *G.* 3. *c.* 39. Power is given to the officers of the cuſtoms and exciſe, to viſit and ſearch ſhips and veſſels, in any harbour or other place belonging to the ſaid iſland, and to ſeize contraband goods there, as they may do in Great Britain. The ſame made ſubject to the laws of cuſtom and exciſe.

3. And for the better defraying the expences of government, the former duties upon importation and exportation ſhall ceaſe, and other duties are laid inſtead thereof; particularly, for every gallon of Britiſh ſpirits imported from England ſhall be paid 1 s, of rum 2 s, pound of bohea tea 1 s, green tea 1 s 6 d, coffee 9 d, tobacco 3 d, chaldron of coals 3 d; hemp, iron, deal boards, and timber, imported from foreign parts 10 l *per centum ad valorem*, ton of French wine 8 l, all other ſorts of wine 4 l. 7 *G.* 3. *c.* 45. 20 *G.* 3. *c.* 42. Duties on goods imported there.

4. And

Reſtriction of the quantities of goods to be imported.

4. And the commiſſioners of the cuſtoms may grant licences (to continue in force for 30 days) to export from England, into the port of Douglaſs only, not exceeding 40000 gallons of Britiſh ſpirits, 30000 gallons of rum (and from Scotland 10000 gallons of rum), 20000 pounds weight of bohea tea, 5000 pounds weight of green tea, 5000 pounds weight of coffee, and 120000 pounds weight of tobacco, in one year. 7 *G.* 3. *c.* 45. 20 *G.* 3. *c.* 42.

What goods may be imported duty free.

5. Flax or flax ſeed, raw or brown linen yarn, wood aſhes, and weed aſhes, fiſh and fleſh of all ſorts, and any ſort of corn or grain, may be imported duty free from any place except from Great Britain only; and from Great Britain or Ireland any white or brown linen cloth, hemp or hemp ſeed, horſes and black cattle, utenſils for manufacture fiſheries or agriculture, bricks and tiles, young trees, ſea ſhells, lime, ſoapers waſte, packthread, and ſmall cordage for nets; and from Great Britain, ſalt, boards, timber, hoops, iron in rods or bars, cotton, indico, naval ſtores, and all ſorts of wood called lumber. 7 *G.* 3. *c.* 45.

Goods exported duty free.

6. The inhabitants of the ſaid iſland may export into Great Britain, beſtials, or any goods of the produce and manufacture of the ſaid iſland (except as above excepted, and except woollen manufactures, beer, and ale); without paying any duty for the ſame, other than is paid for the like in Great Britain. But this not to extend to give liberty to import into Great Britain from the ſaid iſland any goods of the growth or produce of any foreign nation, which may be in part or fully manufactured in the ſaid iſland; except linen manufactures made there of hemp or flax, not being the produce of the ſaid iſland.—And the bounties on exportation of Britiſh and Iriſh linens ſhall be allowed on the like ſpecies of linen made in the iſle of Man, imported into and exported from Great Britain. 5 *G.* 3. *c.* 43.

What goods may not be exported.

7. No tea, brandy, ſtrong waters or ſpirits, coffee, chocolate, tobacco, glaſs, coals, ſilks, or ſalt, ſhall be exported from the ſaid iſland, on pain of forfeiture, together with the veſſel. And no wool, woollen or bay yarn, or live ſheep, ſhall be exported, except to Great Britain. 7 *G.* 3. *c.* 45.

Diſtillery prohibited.

8. No diſtillery of low wines or other ſpirits ſhall be carried on in the ſaid iſland, on pain of forfeiture of 200*l*, with the materials and utenſils. 7 *G.* 3. *c.* 45.

Size of veſſels.

9. No ſpirits ſhall be exported from thence, nor carried coaſtwiſe there, in any ſhip or veſſel leſs than 100 tons burden, nor in any caſk under 60 gallons (except for the uſe of the ſeamen not exceeding two gallons each); and no wine ſhall be there imported or carried coaſtwiſe, in any ſhip leſs

than

than 100 tons burden (except herring veſſels trading to Madeira and the Mediterranean, of not leſs than 70 tons, 29 *G.* 3. *c.* 42.), nor in any caſk leſs than 25 gallons; on pain of forfeiture of the goods and veſſel. 5 *G.* 3. *c.* 39.

Mandamus.

MANDAMUS is a *command*, iſſuing in the king's name out of the court of king's bench, directed to any perſon, corporation, or inferior court of judicature, requiring them to do ſome particular thing therein ſpecified, which appertains to their office and duty. It is a high prerogative writ, of a moſt extenſively remedial nature; and may be iſſued in ſome caſes where the injured party hath alſo another (but more tedious) method of redreſs, as in the caſe of admiſſion or reſtitution to an office; but it iſſues in all caſes where the party hath a right to have any thing done, and hath no other ſpecific means of compelling its performance.

A *mandamus* therefore lies, to compel the admiſſion or reſtoration of the party applying, to any office or franchiſe of a public nature; and more particularly, it iſſues to the judges of any inferior court, commanding them to do juſtice according to the powers of their office, whenever the ſame is delayed.

This writ is grounded on a ſuggeſtion, by the oath of the party injured, of his own right, and of the denial of juſtice by the court or perſon complained of: whereupon, in order more fully to ſatisfy the court that there is a probable ground for ſuch interpoſition, a rule is made (except in ſome general caſes, where the probable ground is manifeſt) directing the party complained of, to ſhew cauſe why a writ of *mandamus* ſhould not iſſue. And if he ſhews no ſufficient cauſe, the writ it ſelf is iſſued, at firſt in the alternative, either to do thus, or ſignify ſome reaſon to the contrary. To which, a return or anſwer muſt be made at a certain day.

And if the inferior judge or other perſon to whom the writ is directed, returns or ſignifies an inſufficient reaſon, then there iſſues in the ſecond place a peremptory *mandamus*, to do the thing abſolutely; to which no other return will be admitted, but a certificate of perfect obedience and due execution of the writ.

If the inferior judge or other perſon makes no return, or fails in his reſpect and obedience, he is puniſhable for his contempt by attachment.

But

But if he, at the firſt, returns a ſufficient cauſe, although it ſhould be falſe in fact, the court of king's bench will not try the truth of the fact upon affidavits; but will for the preſent proceed no further on the *mandamus*. But then the party injured may have an action againſt him for his falſe return, and (if found to be falſe by the jury) ſhall recover damages equivalent to the injury ſuſtained; together with a peremptory *mandamus* to the defendant to do his duty. 3 *Black.* 110.

Manſlaughter. See Homicide.

Marriage.

BY the 26 *G.* 2. *c.* 33. If any perſon ſhall ſolemnize matrimony in any other place than a church or publick chapel (unleſs by ſpecial licence from the archbiſhop of *Canterbury*;) or without publication of bans, or licence, in a church or chapel; he ſhall (on proſecution in 3 years) be adjudged guilty of felony, and tranſported for 14 years; and the marriage ſhall be void. *ſ.* 8, 9. But not to extend to *Scotland*, nor to the marriages of quakers, or jews. *ſ.* 17, 18.

And if any perſon ſhall knowingly and wilfully inſert, or cauſe to be inſerted, in the regiſter book, any falſe entry of any matter or thing relating to any marriage; or falſly make, alter, forge, or counterfeit, any ſuch entry in the regiſter, or any marriage licence, or cauſe the ſame to be done, or aſſent thereunto, or utter as true any ſuch falſified regiſter or copy thereof, or any ſuch forged licence; he ſhall be guilty of felony without benefit of clergy. *ſ.* 16.

For other matters relating to this title, ſee Polygamy, and Settlement by Marriage; in the title Poor; and ſtamp duty on Marriages, in the title Stamps.

Maſter. See Servant, Apprentice.

Meaſures. See Weights.

Medicines.

1. BY the 23 *G.* 3. *c.* 62. All perſons (except ſuch as have ſerved a regular apprenticeſhip to a ſurgeon, apothecary, druggiſt, or chymiſt; or ſuch as ſhall have

have kept a ſhop for three years before the paſſing of this act for the vending of drugs or medicines only not being drugs or medicines ſold by virtue of his majeſty's letters patent; or ſuch as have ſerved as ſurgeons in the navy or army;) uttering or vending medicines, ſhall annually take out a licence, charged, if in London or within the diſtance of the penny poſt, with a ſtamp duty of 20s; elſewhere, 5s.

And upon every box, packet, bottle, phial, or other incloſure of any medicine under the price of 2s 6d, which ſhall be uttered or ſold by any perſon taking out ſuch licence, or by any perſon under the authority of his majeſty's letters patent, ſhall be charged a ſtamp duty of 3d; of the price of 2s 6d, and under 5s, a ſtamp duty of 6d; of the price of 5s and upwards, a ſtamp duty of 1s.

The ſaid duties to be under the management of the commiſſioners of the ſtamp duties.

And every perſon as aforeſaid vending ſuch medicines ſhall ſend to the commiſſioners or officers appointed by them for that purpoſe, paper covers, wrappers, or labels, made for incloſing ſuch medicines, with his name, and any other particular word or thing printed thereon, to denote the value at which the ſame is intended to be ſold, in order that the ſame may be ſtamped and delivered back as occaſion ſhall require; and every ſuch box, packet, bottle, phial, or other incloſure, ſhall be covered, wrapped up or incloſed with ſuch mark or device, and in ſuch manner as the ſaid commiſſioners ſhall direct. And if any perſon required by this act ſo to be licenſed, ſhall ſell any medicine without ſuch licence; or ſhall ſell or expoſe to ſale any ſuch medicine without a proper cover; he ſhall forfeit 5l.

And if any perſon ſhall fraudulently take off any mark, ſeal, or ſtamp; or incloſe any box, packet, bottle, or phial, in any paper ſo ſealed or ſtamped, having been once made uſe of, or ſhall ſell or expoſe to ſale any ſuch medicine, not being at that time incloſed in ſuch cover; or ſhall ſell or buy any ſuch cover, wrapper, or label, in order to be again made uſe of; he ſhall forfeit 10l. And either buyer or ſeller may inform againſt the other, and be himſelf indemnified.

Perſons counterfeiting any ſuch ſeal, ſtamp, or mark ſhall be guilty of felony without benefit of clergy.

The penalties under this act may be recovered in any of his majeſty's courts of record at Weſtminſter; and be diſtributed half to the king, and half with full coſts to him who ſhall ſue.

Metheglin. See Exciſe.

Militia.

BY the 2 *G.* 3. *c.* 20. all former acts relating to the raiſing of the militia are repealed, except in ſuch caſes as are therein ſpecially directed to be ſubject to the proviſions of the ſaid former acts or any of them. *ſ.* 144.

Which ſpecial directions relate only to certain particular places therein mentioned, and not to the militia within any of the counties at large: ſo that as to the general forming and regulating of the militia throughout the kingdom, the old militia acts ſeem to ſtand at preſent wholly repealed, and are only in force in ſome reſpects (as will appear) with regard to the city of *London*, the tower hamlets, and the cinque ports. Nevertheleſs as the militia within theſe places ſpecified doth make up a moſt conſiderable and neceſſary part of the whole militia of the kingdom; it is judged requiſite to inſert firſt of all the ancient militia laws as they ſtood before, and then to infert the new militia laws as they ſtand upon this preſent act, and other acts conſequent thereupon.

I. Of the appointing lieutenants and deputy lieutenants.

II. Conſtituting inferior officers.

III. Perſons chargeable to find ſoldiers.

IV. Inliſting.

V. Muſtering, training, and leading.

VI. Trophy money; for ammunition, carriages and other neceſſaries.

VII. Power to ſearch for arms.

VIII. Puniſhment for deſertion or diſobedience.

IX. Puniſhment for imbezilling horſe or furniture.

X. Officers pay.

XI. Soldiers pay.

XII. Penalties how recoverable.

I. Of the appointing lieutenants and deputy lieutenants.

The king may iſſue commiſſioners to ſuch perſons as he ſhall think fit, to be lieutenants for the ſeveral counties, cities, and places. 13 & 14 *C.* 2. *c.* 3. *ſ.* 2.

Which

Which lieutenants ſhall preſent to his majeſty the names of ſuch perſons as they ſhall think fit, to be deputy lieutenants; and upon his majeſty's approbation of them, ſhall give them deputations accordingly: always underſtood, that the king have power to direct and order otherwiſe; and accordingly at his pleaſure may appoint and commiſſionate, or diſplace ſuch officers. *id.*

And the ſaid deputy lieutenants ſhall obey ſuch orders as they ſhall receive from the lieutenants. *id. ſ.* 13.

But no peer ſhall be capable of acting as lieutenant or deputy lieutenant, unleſs he ſhall firſt before ſix of the privy council, or ſuch others as ſhall be authorized by the king, take the oaths of allegiance and ſupremacy. *id. ſ.* 18. 1 *W. ſeſſ.* 1. *c.* 8. *ſ.* 11.

And no perſon under the degree of a peer, ſhall be capable of acting as lieutenant or deputy lieutenant, unleſs he ſhall firſt take the ſaid oaths; which oaths, any one juſtice of the county or place, may adminiſter to ſuch lieutenant as is not a peer; and the ſaid lieutenant, or any one ſuch juſtice, may adminiſter the ſame to the deputy lieutenants not being peers. 13 & 14 *C.* 2. *c.* 3. *ſ.* 19.

II. Conſtituting inferior officers.

The lieutenants may give commiſſions to ſuch perſons as they ſhall think fit to be colonels, majors, captains, and other commiſſion officers. 13 & 14 *C.* 2. *c.* 3. *ſ.* 2.

Which officers likewiſe, before they ſhall be capable of acting, ſhall firſt take the ſaid oaths; to be adminiſtered by the lieutenants, and in their abſence, or by their directions, the deputy lieutenants, or any two of them. *id. ſ.* 19.

Always underſtood, that his majeſty ſhall have power to order otherwiſe, and accordingly at his pleaſure may appoint and commiſſionate, or diſplace ſuch officers. *id. ſ.* 2.

III. Perſons chargeable to find ſoldiers.

1. The lieutenants and deputies, or the major part of them then preſent, or in the abſence of the lieutenant, the major part of the deputy lieutenants then preſent, which major part ſhall be three at leaſt, ſhall have power to charge any perſon, in the county, city, or town corporate, where his eſtate lies, having reſpect unto, and not exceeding the following proportions, *viz.* Who chargeable with horſe.

No perſon ſhall be charged with finding a horſe, horſeman, and arms, unleſs he have a revenue of 500 l a year in poſſeſſion, or an eſtate of 6000 l in goods or money, beſides the furniture of his houſe; and ſo proportionably for a greater eſtate, as they ſhall ſee cauſe, and think reaſonable. 13 & 14 *C.* 2. *c.* 3. *ſ.* 3.

Who chargeable with foot.

2. And they ſhall not charge any perſon with finding a foot ſoldier and arms, that hath not a yearly revenue of 50 l in poſſeſſion, or a perſonal eſtate of 600 l in goods or money, other than ſtock upon the ground; and after the ſaid rate proportionably for a greater or leſſer revenue or eſtate. *id.*

But they may require the conſtables to furniſh, at a reaſonable time and place to be appointed, on a penalty not exceeding 40 s, ſo many ſufficient arms, with wages and other incident charges, as they ſhall aſſeſs according to the ſaid proportions, upon revenue under 50 l a year, or on perſonal eſtates leſs than 600 l. And in order thereunto, if any perſon ſhall on demand refuſe or neglect to provide a foot ſoldier or ſoldiers according to the proportions aforeſaid, or to pay any ſums of money whereat he ſhall be aſſeſſed by a pound rate (according to a liſt ſigned by the lieutenants and deputies or three of them) towards defraying the neceſſary charge in providing ſuch arms as aforeſaid, the conſtable by warrant may levy ſuch ſum by diſtreſs and ſale, rendering the overplus, charge of diſtraining being firſt deducted: and the tenant ſhall pay the ſame, and deduct it out of his next rent; and in default thereof, his goods alſo ſhall be liable to be diſtrained and ſold. 15 *C.* 2. *c.* 4. *ſ.* 4, 5.

But no perſon having an eſtate of 200 l a year, or perſonal eſtate of 2400 l, ſhall be charged with finding any foot. 15 *C.* 2. *c.* 4. *ſ.* 18.

Who may be charged either with horſe or foot.

3. And they may charge any perſon having an eſtate of 100 l a year, and under 200 l, or who hath a perſonal eſtate of 1200 l, and under 2400 l, towards the finding of foot and horſe, as to them ſhall ſeem moſt expedient. 15 *C.* 2. *c.* 4. *ſ.* 18.

None chargeable with both horſe and foot.

4. But they ſhall not charge any perſon with finding both horſe and foot in the ſame county. 13 & 14 *C.* 2. *c.* 3. *ſ.* 3.

Two or more may be charged together.

5. And they may impoſe the finding of horſe, horſeman, and arms; by joining two, three, or more perſons together in the charge. 13 & 14 *C.* 2. *c.* 3. *ſ.* 4.

But no perſon not having 100 l a year in poſſeſſion in lands, leaſehold or copyhold, or 1200 l perſonal eſtate, ſhall

ſhall be compellable to contribute in finding any horſe and horſeman. *id. ſ.* 5.

6. And no perſon chargeable to find a horſe and horſeman, or to be contributory thereunto, ſhall for the ſame eſtate be chargeable towards finding a foot ſoldier with arms, or contributory thereunto. 13 & 14 *C.* 2. *c.* 3. *ſ.* 4. Perſon chargeable with horſe not to be charged with foot.

7. Where two or more are charged to find any horſe or foot ſoldier and arms, three deputy lieutenants may appoint who ſhall find the ſame, and who ſhall be the contributors, and ſettle the ſums to be paid by every contributor in caſe the ſame contribution be not aſcertained by agreement of the parties. 10 & 11 *W.* *c.* 12. *ſ.* 3. Who ſhall find and who contribute.

8. And for the better diſcovery of the ability of the perſons ſo to be aſſeſſed and charged, and of all miſdemeanors tending to the hindrance of the ſervice, they may examine on oath ſuch perſons as they ſhall judge neceſſary or convenient, or ſhall be produced by the party charged or accuſed, other than the perſons themſelves to be aſſeſſed or accuſed. 13 & 14 *C.* 2. *c.* 3. *ſ.* 11. Perſons may be examined on oath.

9. And they may hear complaints, and give redreſs, according to the merits of the cauſe. 13 & 14 *C.* 2. *c.* 3. *ſ.* 5. Hearing and determining complaints.

10. No peer ſhall be charged otherwiſe than as follows, *viz.* the king may iſſue out commiſſions under the great ſeal, to ſo many peers (not fewer than 12) as he ſhall think fit; who, or any 5 of them, ſhall have power to aſſeſs all or any peers, according to the proportions herein mentioned (except the monthly taxes hereafter following) and to execute all the powers of this act, as well for laying aſſeſſments, as impoſing of penalties (impriſonment only excepted). Which aſſeſſment or charge ſo made, and penalties impoſed, ſhall be certified to the lieutenants. And in caſe of default in performance of any thing to be done or paid by any peer, the lieutenant and deputies, or any three of them, may cauſe diſtreſſes to be taken in the lands of ſuch defaulter; and if ſatisfaction ſhall not be made in one week after ſuch diſtreſs taken, then the ſame to be ſold: and if a tenant be diſtrained, he may deduct the ſum levied out of his next rent. 13 & 14 *C.* 2. *c.* 3. *ſ.* 33. Peers how to be charged.

11. Every commiſſioned foot officer ſhall be exempted from finding, or contributing to find, any horſe or foot ſoldier, for his whole eſtate, if it is but charged with one horſe, or a leſs charge, or for ſuch part of his eſtate as is charged with one horſe, if his whole eſtate be charged Officers how chargeable.

with a greater charge than one horſe in the county or lieutenancy where he ſo ſerves as a foot officer, in reſpect of the expence which the ſaid employment doth neceſſarily engage him in. 15 *C.* 2. *c.* 4. *ſ.* 9.

Papiſts how to be charged.

12. Where any papiſt, reputed papiſt, or other perſon refuſing to take the oaths, is chargeable in reſpect of his eſtate, the lieutenant, or in his abſence the deputies, or three of them, may appoint ſuch perſon as they ſhall think moſt meet, to furniſh the ſame; and may charge the ſame eſtate with the payment of the yearly ſum of 8l for a horſe, horſeman, and arms, and of 30s for a foot ſoldier and arms. And if he ſhall not pay the ſame on demand, they may by their warrant levy the ſame by diſtreſs and ſale of the goods of ſuch perſon, or of his tenants, rendering the overplus, all neceſſary charges in levying thereof being firſt deducted; and ſuch tenant ſhall deduct the ſame out of his rent. 10 & 11 *W.* *c.* 12. *ſ.* 2.

Perſon reſiding out of the liberty, how to be charged.

13. Where any perſon ſhall be charged in the county, city, or place, where he doth not reſide, they ſhall ſend notice of the charge, if he have any land in his own occupation, to ſuch perſon as he employs as his ſervant in managing the ſame; and if all his eſtate be let to farm, then to one or two of the moſt ſufficient tenants; who ſhall forthwith, with all convenient ſpeed, convey the ſame to their maſter or landlord; and in ſuch time as ſhall be appointed, bring an account of his anſwer: And on neglect or refuſal of the landlord, to provide ſuch horſe or foot, as is duly charged upon him, for the yearly rent reſerved upon every demiſe or other grant, and not otherwiſe, within the time limited; then the tenant ſhall provide and do, as the landlord in that behalf ought to have done: And if the tenant ſhall refuſe or neglect, within the time limited, the lieutenants, and in their abſence, or by their directions, the deputies, or two of them, may levy by their warrant all ſuch penalties as are appointed by this act, by diſtreſs and ſale of the offender's goods. 13 & 14 *C.* 2. *c.* 3. *ſ.* 16.

And the tenant may defaulk out of his next rent, all ſuch money as he ſhall neceſſarily lay out in providing the ſame, or ſhall be levied upon him by diſtreſs for any default; unleſs the landlord ſhall make it appear in two months after ſuch levying, before the lieutenant, or in his abſence, or by his direction, the deputies, or any two of them, that the default and penalty was occaſioned by the tenant's wilful neglect. *id.* *ſ.* 17.

But this ſhall not avoid any covenant between landlord and tenant, concerning the finding horſes or arms, or the bearing of any charges by any tenant; but all charges ſhall be born by ſuch tenant, according to the agreement. *id. ſ.* 29.

Penalty on perſons not furniſhing.

14. If any perſon ſhall refuſe or neglect, by a reaſonable time to be appointed, to provide ſuch horſe, horſeman, arms, and other furniture, or to pay ſuch ſum towards providing the ſame as aforeſaid; the lieutenants and deputies, or three of them, may inflict a penalty on ſuch perſon not exceeding 20*l*, and by their warrant may levy ſuch ſum, or the value of ſuch horſe, arms, and furniture, and ſuch penalty inflicted, by diſtreſs and ſale, rendering the overplus, all neceſſary charge in levying thereof being firſt deducted; the ſame to be employed to the uſes in default whereof the ſame was impoſed. 13 & 14 *C.* 2. *c.* 3. *ſ.* 9.

And if any perſon ſhall refuſe or neglect, by a reaſonable time to be appointed, to provide and furniſh ſuch foot ſoldier and arms as ſhall be charged upon him; the lieutenants and deputies, or three of them, may inflict a penalty not exceeding 5*l*, to be employed to the uſes in default whereof it was impoſed: And the conſtable, by warrant for that purpoſe, may levy ſuch ſum by diſtreſs and ſale, rendering the overplus, charges of diſtraining being firſt deducted; and the tenant ſhall pay the ſame, and deduct it out of his next rent, and in default thereof his goods alſo ſhall be liable to be diſtrained and ſold. 15 *C.* 2. *c.* 4. *ſ.* 3, 5.

And if any perſon charged as a *contributor*, being an inhabitant, ſhall refuſe to pay his proportion on demand; or if he be not an inhabitant, if his tenant ſhall not pay the ſame upon demand; three deputy lieutenants, by their warrant, may levy the ſame by diſtreſs and ſale, rendering the overplus, all neceſſary charge in levying thereof being firſt deducted; and ſuch tenant may deduct the ſame out of his rent. 10 & 11 *W.* *c.* 12. *ſ.* 3.

None compellable to ſerve in perſon.

15. But no perſon charged with the finding horſe or foot, or with contributing thereunto; ſhall be compellable to ſerve in perſon, but may find one to ſerve for him, to be approved by the captain; ſubject nevertheleſs to be altered upon appeal to the lieutenant, or in his abſence to two deputy lieutenants. 13 & 14 *C.* 2. *c.* 3. *ſ.* 25.

IV. Inliſting.

Every man who ſhall ſerve in his own perſon, or ſuch perſon as ſhall be accepted in his ſtead, ſhall at the next muſter of his troop or company, give in his name and place of abode, unto ſuch perſon as the lieutenant, or in his abſence, or by his direction, any two deputy lieutenants ſhall appoint; to the end that the ſame may be liſted. 13 & 14 *C.* 2. *c.* 3. *ſ.* 25.

But he ſhall not be capable of acting as a ſoldier, unleſs he firſt take the ſaid oaths above mentioned, to be adminiſtered by the lieutenant, or in his abſence, or by his direction, the deputy lieutenants, or any two of them, *id. ſ.* 19.

V. Muſtering, training, and leading.

Power to raiſe and lead.

1. By the 13 & 14 *C.* 2. *c.* 3. The lieutenants ſhall have power to call together the militia, and to arm and array them, and form them into companies, troops, and regiments, and in caſe of inſurrection, rebellion, or invaſion, them to lead, conduct, and employ, or cauſe them to be led, conducted, and employed, as well within the ſeveral counties, cities, and places for which they ſhall be commiſſioned reſpectively, as alſo into any other counties and places, for the ſuppreſſing of all ſuch inſurrections and rebellions, and repelling of invaſions, as may happen to be, according as they ſhall receive directions from his majeſty. *ſ.* 2.

And by the 15 *C.* 2. *c.* 4. The lieutenants, and in their abſence, or by their directions, the deputy lieutenants, or two of them, ſhall have power to lead, train, and exerciſe, or by warrant under their hands and ſeals, cauſe to be led, trained, and exerciſed, the perſons ſo raiſed, arrayed, and weaponed. *ſ.* 1.

But nothing herein ſhall extend to the giving any power for marching any ſubjects out of the realm, otherwiſe than by the laws of *England* ought to be done. 13 & 14 *C.* 2. *c.* 3. *ſ.* 32.

Time of muſtering.

2. The ordinary terms for training, exerciſing, and muſtering, ſhall be theſe: The general muſter and exerciſe of regiments, not above once a year; The training and exerciſing of ſingle companies, not above four times a year, unleſs ſpecial directions be given by the king or his privy council; And ſuch ſingle companies and troops ſhall not at any one time be continued in exerciſe

exerciſe above the ſpace of two days; And at a general muſter and exerciſe of regiments, no officer or ſoldier ſhall be conſtrained to ſtay above four days together from their habitations. *id. ſ.* 21.

3. At every ſuch muſter and exerciſe, every muſqueteer ſhall bring with him half a pound of powder, and half a pound of bullets; and every muſqueteer that ſhall ſerve with a matchlock, ſhall bring with him three yards of match; and every horſeman ſhall bring with him a quarter of a pound of powder, and a quarter of a pound of bullets; all which ſhall be at the charge of him who provides the ſaid ſoldier and arms: on pain of 5s for every omiſſion. 13 & 14 *C.* 2. *c.* 3. *ſ.* 21. 15 *C.* 2. *c.* 4. *ſ.* 7. Accoutrements.

And the arms offenſive and defenſive, with the furniture for horſe, ſhall be as follows; the defenſive arms, a back, breaſt, and pot, piſtol proof; the offenſive arms, a ſword and a caſe of piſtols, the barrels not under 14 inches in length; the furniture for the horſe, a great ſaddle or pad with burs and ſtraps to affix the holſters unto, a bit and bridle, with a pectoral and crupper: for the foot, a muſqueteer ſhall have a muſquet, the barrel not under three foot in length, and the gauge of the bore to be for 12 bullets to the pound, a collar of bandileers, with a ſword: a pikeman to be armed with a pike of aſh, not under 16 foot in length (head and foot included) with a back, breaſt, head-piece, and ſword. 13 & 14 *C.* 2. *c.* 3. *ſ.* 21.

4. The muſter maſter ſhall be an inhabitant of the county. 15 *C.* 2. *c.* 4. *ſ.* 6. Muſter maſter.

And once a year each ſoldier ſhall pay to him ſuch ſum, not exceeding 1s for a horſe-man, and 6d for a footman, as the lieutenants, and deputies, or three of them, ſhall under their hands and ſeals direct; who ſhall have power to levy the ſame, by diſtreſs and ſale of the goods of the perſons charged to find ſuch horſeman, or foot ſoldier, unleſs the default be by the neglect of ſuch ſoldier, who in that caſe ſhall be accountable for the ſame. *id.*

5. If any perſon charged ſhall refuſe or neglect to ſend in, or deliver his horſe, arms, or other furniture, at the beat of drum, ſound of trumpet, or other ſummons; the lieutenants, and deputies, or three of them, may inflict a penalty not exceeding 5l, to be levied by diſtreſs and ſale, rendering the overplus, neceſſary charges for levying being firſt deducted. 13 & 14 *C.* 2. *c.* 3. *ſ.* 10. Penalty on not furniſhing.

Exception as to corporations.

6. Provided, that no officer or ſoldier of the militia belonging to any city, borough, or town corporate, being a county of itſelf, or to any other corporation or port town, who have uſed to be muſtered only within their own precincts, ſhall be compellable to appear out of ſuch precincts at any muſter or exerciſe only. 13 & 14 *C.* 2. *c.* 3. *ſ.* 28.

VI. Trophy money for ammunition, carriages, and other neceſſaries.

And for furniſhing ammunition and other neceſſaries, the lieutenants and deputies, or three of them, ſhall have power to lay rates on the reſpective counties and places, not exceeding in the whole in any one year the proportion of a fourth part of one month's aſſeſſment in each county, after the rate of 70,000l a month, charged by the act of the 12 *C.* 2. *c.* 29. Which ſhall be aſſeſſed, collected, and paid by ſuch perſons, and according to ſuch directions as ſhall be given by the lieutenants and deputies, or three of them; under the like penalties, and by the like ways and means, as are preſcribed in the ſaid act. 13 & 14 *C.* 2. *c.* 3. *ſ.* 7.

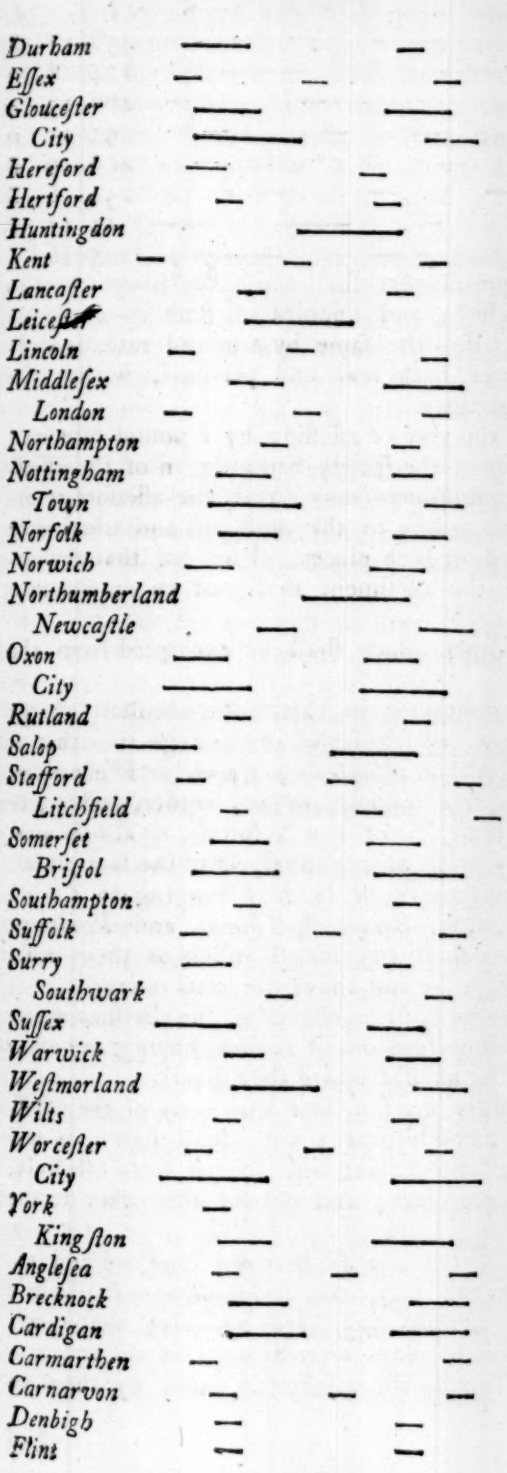
Which ſaid act of the 12 *C.* 2. *c.* 29. directs the ſum of 70,000l a month to be raiſed in the like manner as by the act of the 12 *C.* 2. *c.* 21. which act did direct the ſame to be raiſed, according to the proportions, and in ſuch manner as by an ordinance of both houſes made in his majeſty's abſence: Which ordinance was as followeth;

That is to ſay, there ſhall be raiſed an aſſeſſment of 70,000l a month, in theſe proportions,

On the county of

	l.	*s.*	*d.*
Bedford	933	6	8
Berks	1088	17	10
Buckingham	1283	6	8
Cambridge	1102	10	0
Iſle of Ely	367	10	0
Cheſter county	770	0	0
City	85	11	2
Cornwall	1633	6	8
Cumberland	108	0	0
Derby	933	6	8
Devon	3003	15	6
Dorſet	1311	10	6
Town of Pool	10	14	0

Durham



	l.	s.	d.
Durham	153	14	4
Eſſex	3500	0	0
Glouceſter	1626	6	8
City	162	11	2
Hereford	1166	13	4
Hertford	1400	0	0
Huntingdon	622	4	6
Kent	3655	11	2
Lancaſter	933	6	8
Leiceſter	1088	17	8
Lincoln	2722	4	10
Middleſex	1788	17	10
London	4666	13	4
Northampton	1400	0	0
Nottingham	903	4	4
Town	30	2	4
Norfolk	3624	8	10
Norwich	186	13	4
Northumberland	179	19	10
Newcaſtle	35	11	8
Oxon	1127	15	6
City	107	6	8
Rutland	272	4	6
Salop	1322	4	4
Stafford	919	6	8
Litchfield	14	0	0
Somerſet	2722	4	6
Briſtol	171	2	2
Southampton	2022	4	4
Suffolk	3655	11	2
Surry	1565	5	6
Southwark	184	14	6
Suſſex	1905	11	2
Warwick	1244	8	10
Weſtmorland	73	19	4
Wilts	1944	8	10
Worceſter	1182	4	4
City	62	4	6
York	3043	8	10
Kingſton	67	13	4
Angleſea	135	14	4
Brecknock	361	13	4
Cardigan	213	10	0
Carmarthen	352	6	8
Carnarvon	202	4	4
Denbigh	272	4	6
Flint	135	14	6
Glamorgan			

	l.	s.	d.
Glamorgan	458	17	8
Merioneth	124	8	10
Monmouth	466	13	4
Montgomery	295	11	0
Pembroke	406	0	0
Radnor	254	6	8
Haverford West	14	11	8
Berwick	5	16	8

And the commiſſioners ſhall cauſe the proportions to be equally aſſeſſed; and appoint aſſeſſors in each pariſh, who ſhall aſſeſs the ſame by a pound rate, according to all eſtates both real and perſonal, within the limits of their pariſhes.

And in caſe the way of aſſeſſing by a pound rate ſhall prove obſtructive to the ſpeedy bringing in of the aſſeſſment; the commiſſioners may direct the aſſeſſors to aſſeſs the ſame, according to the moſt juſt and uſual way of rates practiſed in ſuch places. Provided that the apportionment of the aſſeſſment ſhall not be drawn into precedent.

And no privileged place ſhall be exempted from the aſſeſſment.

But nothing contained in this ordinance ſhall charge any maſter, fellow, or ſcholar of any college in either of the univerſities, or of *Wincheſter*, *Eaton*, or *Weſtminſter*, or in any other free ſchools, or any reader, officer, or miniſter of the ſame, or of any hoſpitals, or almſhouſes, in reſpect of any profit ariſing in reſpect of the ſaid places; nor charge any houſes or lands belonging to *Chriſt's hoſpital*, *Bartholomew*, *Bridewell*, *Thomas*, and *Bethlehem*. But their tenants ſhall pay for ſo much as their leaſes are yearly worth, over and above the rents reſerved.

Perſons in *London* ſhall be aſſeſſed in the pariſhes where they dwell: And perſons out of *London*, having any office in *London*, ſhall be aſſeſſed where they dwell.

And the aſſeſſors ſhall deliver one copy of the aſſeſſment unto the commiſſioners; who ſhall ſign and ſeal two duplicates, and deliver one to the ſub-collectors, with warrant to collect; and deliver the other to the receiver general.

And if any difference ariſe between landlord and tenant concerning the rates, the commiſſioners ſhall ſettle the ſame; and perſons aggrieved by being over-rated, on complaint in ſix days after demand to the commiſſioners who allowed the aſſeſſment, may by them be relieved.

And

And if any controverſy ſhall ariſe which concerns any of the commiſſioners, he ſhall withdraw.

On non-payment, the collectors may diſtrain; and in the day-time, taking with them the conſtable, may break open any houſe, cheſt, or box where the goods are. And if any queſtion ariſe upon the taking ſuch diſtreſs, the ſame ſhall be determined by the commiſſioners.

And if perſons convey their goods, the commiſſioners may impriſon them (not being peers) till payment; and tenants may deduct the ſame out of their rent.

And if the proportions be not fully paid, nor can be levied, the commiſſioners may re-aſſeſs.

And if any perſon ſhall wilfully neglect to perform his duty in the execution of this ordinance, the commiſſioners may fine him, not exceeding 20 l; to be levied by diſtreſs, and paid to the receiver general.

And the receiver general ſhall have 1 d in the pound; the ſub-collectors 1 d, the head collectors 1 d, and the commiſſioners clerks 1 d.

But nothing herein ſhall be drawn into example, to the prejudice of the ancient rights belonging to the peers.

And the ſame power which the commiſſioners had by this ordinance (which is much in the manner of the ancient ſubſidies, and of the preſent land-tax), the lieutenants and deputy lieutenants ſeem to have by the act of the 13 & *C.* 2.

And the lieutenants and deputies, or the chief officers upon the place, in the reſpective counties and places, may charge carts, waggons, wains, and horſes, for the carrying of powder, match, bullet, and other materials, allowing 6 d a mile outward only, to every ſuch cart, waggon and wain with five horſes, or ſix oxen, and ſo proportionably; and for every horſe employed out of waggon or cart 1 d; upon the marching of any regiment, company, or troop, on occaſion of invaſion, inſurrection, or rebellion. 13 & 14 *C.* 2. *c.* 3. *ſ.* 8.

And the lieutenants ſhall appoint one or more treaſurers, or clerks, for receiving and paying ſuch monies when levied; of all which receipts and diſburſements thereof, they ſhall every ſix months give their accounts in writing upon oath, to the lieutenants and deputies, or three of them; which account ſhall be forthwith certified to the privy council, and a duplicate thereof ſhall be certified to the juſtices at the next ſeſſions. *id. ſ.* 12.

Always

Always provided, that the lieutenants or their deputies ſhall not iſſue warrants for raiſing any trophy money, till the juſtices in ſeſſions ſhall have examined, ſtated, and allowed the accounts of the trophy money collected for any preceding year, and certified ſuch examination under the hands and ſeals of three or more ſuch juſtices. 10 *Ann. c.* 25. *ſ.* 4.

VII. Power to ſearch for arms.

The lieutenants, or two of their deputies, may, by warrant under their hands and ſeals, employ ſuch perſons as they ſhall think fit (of which a commiſſioned officer, and the conſtable or his deputy, or in their abſence ſome other perſon bearing office in the pariſh where the ſearch ſhall be, ſhall be two) to ſearch for and ſeize all arms in the cuſtody of any perſon, whom the lieutenants or two of their deputies ſhall judge dangerous to the peace of the kingdom, and to ſecure the ſame, and thereof to give account to the lieutenants, and in their abſence, or by their directions, to the deputies, or two of them: Provided, that no ſearch be made in any houſe between ſun-ſetting and ſun-riſing, other than in cities or their ſuburbs, and towns corporate, market towns, and houſes within the bills of mortality, where they may ſearch in the night-time, if the warrant ſo direct; and in caſe of reſiſtance, may enter by force: And no dwelling-houſe of a peer ſhall be ſearched, but by immediate warrant from the king, or in the preſence of the lieutenant or a deputy lieutenant: And in all places and houſes whatſoever, where ſearch is to be made, it ſhall be lawful, in caſe of reſiſtance, to enter by force. And the arms ſo ſeized may be reſtored to the owners again, if the lieutenants, or in their abſence as aforeſaid, their deputies, or two of them, ſhall ſo think fit. 13 & 14 *C.* 2. *c.* 3. *ſ.* 14.

VIII. Puniſhment for deſertion or diſobedience.

If any of the ſaid militia ſhall not appear and ſerve, compleatly furniſhed with horſe and arms and other furniture, at the beat of drum, ſound of trumpet, or other ſummons: the lieutenants, and in their abſence, or by their directions, the deputies, or two of them, if the default be in ſuch perſon, may impriſon him for five days; or may inflict a penalty, if he is a horſeman, not exceeding

ing 20 s, and if a footman, not exceeding 10 s, to be paid down without delay. 13 & 14 *C.* 2. *c.* 3. *ſ.* 10.

And the lieutenants, or deputies, or chief officers upon the place, may impriſon mutineers, and ſuch ſoldiers as do not their duty at the days of muſter and training; and may inflict for puniſhment for every ſuch offence, any pecuniary mulct not exceeding 5 s, or impriſonment not exceeding twenty days. 13 & 14 *C.* 2. *c.* 3. *ſ.* 8.

And ſuch perſon duly liſted, ſhall not be exchanged, or deſert, or be diſcharged, but by the leave of the lieutenant, or two deputies, or his captain, upon reaſonable cauſe, firſt obtained in writing under hand and ſeal; on pain of 20 l, to be levied as other penalties; and for non-payment or want of diſtreſs, to be committed to the common gaol of the county, not exceeding three months. *id. ſ.* 25.

IX. Puniſhment for imbezilling horſe or furniture.

If any perſon ſhall detain or imbezil his horſe, arms, or furniture; the lieutenants, and in their abſence, or by their directions, the deputies, or two of them, if the default be in ſuch perſon, may impriſon him till he have made ſatisfaction. 13 & 14 *C.* 2. *c.* 3. *ſ.* 10.

X. Officers pay.

For ſatisfaction of the officers of their pay, during ſuch time (not exceeding one month) as they ſhall be with their ſoldiers in actual ſervice, proviſion ſhall be made by the king out of the treaſury. 13 & 14 *C.* 2. *c.* 3. *ſ.* 7.

And the lieutenants and deputies, or three of them, ſhall have power to diſpoſe of ſo much of the ſaid fourth part of the 70,000 l a month, to the inferior officers, for their pains and encouragement, as to them ſhall ſeem expedient. 15 *C.* 2. *c.* 4. *ſ.* 12.

XI. Soldiers pay.

Every perſon charged ſhall (on pain of 5 s) pay on demand 2 s 6 d a day to each trooper, and ſhall (on pain of 2 s) pay on demand 1 s a day to each foot ſoldier, for ſo many days as they ſhall be abſent from their dwellings or callings, by occaſion of muſter or exerciſe, unleſs ſome certain agreement be made to the contrary before good witneſs; and the ſaid penalty is to be paid to ſuch ſoldier, to whom his pay was denied; the reſpective

tive penalties to be demanded in ſix weeks after default, or at or before the next muſter or exerciſe, and not afterwards. 15 *C.* 2. *c.* 4. *ſ.* 2.

And in caſe of invaſions, inſurrections, or rebellions, whereby occaſion ſhall be to draw out ſuch ſoldiers into actual ſervice; the perſons ſo charged ſhall provide each their ſoldier with pay in hand not exceeding one month's pay, as ſhall be directed by the lieutenants, and in their abſence, or by their directions, by the deputies or any two of them. 13 & 14 *C.* 2. *c.* 3. *ſ.* 7.

For the repayment whereof, proviſion ſhall be made by the king out of the treaſury. *id.*

And in caſe a month's pay ſhall be provided and advanced as aforeſaid, no perſon who ſhall have advanced his proportion thereof, ſhall be charged with any other like month's payment, until he ſhall have been reimburſed the ſaid month's pay; and ſo from time to time, the month's pay by him laſt before provided and advanced. *id.*

XII. Penalties how recoverable.

The forfeitures, penalties, and payments by the 15 *C.* 2. *c.* 4. not otherwiſe herein directed, may be recovered by warrant under the hands and ſeals of the lieutenants and deputies, or three of them, by diſtreſs and ſale; and if ſufficient diſtreſs cannot be found, then the party to be impriſoned till ſatisfaction ſhall be made. 15 *C.* 2. *c.* 4. *ſ.* 16.

And all high and petty conſtables, and other officers and miniſters, ſhall be aiding and aſſiſting to the lieutenants and their deputies, or any of them. 13 & 14 *C.* 2. *c.* 3. *ſ.* 15.

Militia (New).

THE new militia laws were at firſt ſet on foot in the 30 *G.* 2. which in a few years time received ſo many alterations, that in the 2 *G.* 3. it was thought neceſſary to repeal the whole, and reduce the ſubſtance thereof into one act of parliament. Since which time, ſo many other alterations have been made, that a new reviſal thereof ſeems very deſirable; and this the rather, as the leading ſtatute of 2 *G.* 3. *c.* 20. to which all the ſubſequent ſtatutes

tutes refer, was founded on the principles of the original ſtatute of 30 *G.* 2. *c.* 25. being before any militia were then raiſed, and conſequently proceeds all along upon that ſuppoſition, giving directions concerning the firſt raiſing of the militia in the ſeveral places; which directions, when the militia are now already on foot, are in ſome inſtances ſuperfluous, or otherwiſe inapplicable. The ſtatutes now in force, relating to the ſaid militia (excluſive of the annual acts concerning their cloathing and pay), are theſe following:

2 *G.* 3. *c.* 20.
3 *G.* 3. *c.* 10.
4 *G.* 3. *c.* 17.
5 *G.* 3. *c.* 34.
5 *G.* 3. *c.* 36.
6 *G.* 3. *c.* 30.
7 *G.* 3. *c.* 17.
9 *G.* 3. *c.* 42.
10 *G.* 3. *c.* 9.
11 *G.* 3. *c.* 32.
16 *G.* 3. *c.* 3.
18 *G.* 3. *c.* 59.
19 *G.* 3. *c.* 44.
19 *G.* 3. *c.* 72.
19 *G.* 3. *c.* 76.
20 *G.* 3. *c.* 8.
20 *G.* 3. *c.* 44.
21 *G.* 3. *c.* 7.
21 *G.* 3. *c.* 18.
22 *G.* 3. *c.* 6.
22 *G.* 3. *c.* 62.

The ſubſtance whereof it is endeavoured to compriſe under the following heads:

I. Appointment of the lieutenants, deputy lieutenants, officers, and others, for execution of the ſervice.
II. Number of men to be raiſed in the ſeveral counties.
III. Iſſuing precepts to return liſts.
IV. Return and ſettling of the liſts.
V. Proportioning the numbers in the ſeveral hundreds or other large diviſions.
VI. Proportioning in the ſeveral pariſhes, tithings, or places.
VII. Balloting.
VIII. Swearing and inrolling; and therein, of ſubſtitutes.
IX. Forming the militia into regiments and companies.
X. Training and exerciſe.
XI. Cloathing and pay.
XII. Drawn out into actual ſervice.

XIII. Pri-

XIII. Privileges and exemptions of militia men.
XIV. General power of inforcing the execution hereof.
XV. Puniſhment of ſerjeants, drummers and fifers for diſobedience or deſertion.
XVI. Exceptions with reſpect to particular places and perſons.
XVII. Proceedings where the militia have not been already raiſed.

I. Appointment of the lieutenants, deputy lieutenants, officers, and others, for execution of the ſervice.

Appointment of the lieutenants, deputy lieutenants, and commiſſion officers.

1. THE king ſhall iſſue forth commiſſions of lieutenancy; and ſuch lieutenants ſhall have the chief command of the militia, and ſhall have power, and are required, to call together all ſuch perſons, and to arm and array them, at ſuch times, and in ſuch manner, as is herein after expreſſed: And ſuch lieutenants ſhall from time to time appoint ſuch perſons as they ſhall think fit, qualified as is herein after directed, and living within their reſpective counties, ridings, and places, to be their deputy lieutenants; the names of ſuch perſons having been firſt preſented to, and approved by his majeſty: And ſhall, before the third ſubdiviſion meetings for allotting the men, appoint a proper number of colonels, lieutenant colonels, majors, and other officers, qualified as is herein after directed; and ſhall certify to his majeſty the names and ranks of ſuch officers, within one month after they ſhall be ſo appointed; and if the king, within one month after ſuch certificate, ſhall ſignify his diſapprobation of any ſuch perſon, the lieutenant ſhall not grant to him a commiſſion; but ſhall grant commiſſions to ſuch perſons ſo appointed, who ſhall not be diſapproved by his majeſty. 2 *G.* 3. *c.* 20. *ſ.* 1, 5.

When the lieutenant is abſent, or the lieutenancy is vacant.

2. When the lieutenant ſhall be abſent out of the kingdom of *Great Britain*, the king may appoint three deputy lieutenants to grant commiſſions to officers, on any vacancy that ſhall happen during ſuch abſence. 2 *G.* 3. *c.* 20. *ſ.* 2.

And more generally, by the 4 *G.* 3. *c.* 17. Where the office of lord lieutenant is vacant, the king may appoint three of the deputy lieutenants to execute the office of lord lieutenant during ſuch vacancy. *ſ.* 2.

And

And by the 5 *G.* 3. *c.* 36. *ſ.* 3. If there ſhall happen to be no lieutenant, in any county or place; three deputy lieutenants, to be appointed by his majeſty's ſign manual, ſhall do every act neceſſary for carrying into execution the acts of the 2 *G.* 3. *c.* 20. the 4 *G.* 3. *c.* 17. and the ſaid act of the 5 *G.* 3. *c.* 36.

Provided that no deputation or commiſſion ſhall be vacated, by the revocation, expiration, or diſcontinuance of the lieutenant's commiſſion. 2 *G.* 3. *c.* 20. *ſ.* 4.

General qualifications of the officers.

3. By the 2 *G.* 3. *c.* 20. divers qualifications of the officers were appointed; moſt of which were altered (but without prejudice to the officers that were entred upon the former qualifications) by the 9 *G.* 3. *c.* 42. as follows: In every county, riding, or place, (except as is herein after excepted) there ſhall be appointed 20 or more deputy lieutenants, if ſo many perſons qualified can be therein found; if not, then ſo many as can be therein found; and each perſon ſo to be appointed a *deputy lieutenant*, ſhall be ſeiſed or poſſeſſed, either in law or equity, for his own uſe or benefit, in poſſeſſion of a freehold, copyhold, or cuſtomary eſtate for life, or for ſome greater eſtate, or of an eſtate for ſome long term of years determinable on one or more lives, in manors, meſſuages, lands, tenements, or hereditaments, in *England*, *Wales*, or *Berwick upon Tweed*, of the yearly value of 200 l, or ſhall be heir apparent of ſome perſon who ſhall be in like manner ſeiſed or poſſeſſed of a like eſtate of the yearly value of 400 l. *Colonel* ſhall be ſeiſed or poſſeſſed of a like eſtate of the yearly value of 1000 l, or ſhall be heir apparent to ſome perſon who ſhall be ſeiſed or poſſeſſed of a like eſtate of the yearly value of 2000 l. *Lieutenant colonel* ſhall be ſeiſed or poſſeſſed of a like eſtate of 600 l, or ſhall be heir apparent of ſome perſon who ſhall be ſeiſed or poſſeſſed of a like eſtate of the yearly value of 1200 l. *Major* or *captain* ſhall be ſeiſed or poſſeſſed of a like eſtate of the yearly value of 200 l, or ſhall be heir apparent of ſome perſon who ſhall be ſeiſed or poſſeſſed of a like eſtate of the yearly value of 400 l; or ſhall be a younger ſon of ſome perſon who ſhall be, or at the time of his death was, ſeiſed or poſſeſſed of a like eſtate of the yearly value of 600 l. *Lieutenant* ſhall be in like manner ſeiſed or poſſeſſed of a like eſtate of the yearly value of 50 l, or perſonal eſtate alone of the value of 1000 l, or real and perſonal eſtate together of the value of 2000 l; or ſon of a perſon who ſhall be or at the time of his death was ſeiſed or poſſeſſed of a like eſtate of the yearly value of 100 l, or perſonal eſtate alone of the value of 2000 l, or real and perſonal together of the value of 3000 l. *En-*

ſign

ſign ſhall be ſeiſed or poſſeſſed of a like eſtate of the yearly value of 20 l, or perſonal eſtate alone of the value of 500 l, or real and perſonal together of the value of 1000 l; or ſhall be ſon of ſome perſon who ſhall be or at the time of his death was ſeiſed or poſſeſſed of a like eſtate of the yearly value of 50 l, or perſonal eſtate alone of the value of 1000 l, or real and perſonal together of the value of 1500 l. One moiety of which ſaid eſtates, required as qualifications for each deputy lieutenant, colonel, lieutenant colonel, major, and captain reſpectively, ſhall be ſituate or ariſing within ſuch reſpective county or riding in which he ſhall be appointed to ſerve. 2 *G.* 3. *c.* 20. *ſ.* 5. 9 *G.* 3. *c.* 42. *ſ.* 3.

Provided, that the immediate reverſion or remainder of and in manors, meſſuages, lands, tenements, or hereditaments, which are leaſed for one, two, or three lives, or for any term of years determinable on the death of one, two, or three lives, on reſerved rents, and which are to the leſſees of the clear yearly value of 300 l, ſhall be deemed equal to an eſtate herein before deſcribed, of the yearly value of 100 l, and ſo in proportion. 2 *G.* 3. *c.* 20. *ſ.* 6.

Alſo a perſon poſſeſſed, either in law or equity, for his own uſe and benefit, in poſſeſſion of an eſtate, for a certain term originally granted for 20 years or more, of an annual value (over and above all rents and charges payable out of or in reſpect of the ſame) equal to the annual value of ſuch an eſtate as is required for the qualification of a deputy lieutenant and commiſſion officer reſpectively, and ſituate as aforeſaid, ſhall be deemed duly qualified. *ſ.* 7.

Qualification in the ſmaller counties.

4. In the ſeveral counties of *Cumberland*, *Huntingdon*, *Monmouth*, *Weſtmorland* and *Rutland*, and in every county and place in *Wales*, there ſhall be five or more deputy lieutenants appointed (if ſo many qualified can be found therein); and the eſtates requiſite for the qualification of the deputy lieutenants and officers therein ſhall be as follows: A *deputy lieutenant* ſhall be ſeiſed or poſſeſſed of a like eſtate as aforeſaid of the yearly value of 150 l, or ſhall be heir apparent of a perſon having a like eſtate of 300 l. *Colonel* 600 l; or heir apparent of a perſon having a like eſtate of 1200 l. *Lieutenant colonel* or *major commandant* 400 l; or heir apparent of a perſon having a like eſtate of 800 l. *Major* or *captain* 150 l; or ſon of a perſon having or who had at the time of his death a like eſtate of 300 l. *Lieutenant* 30 l; or perſonal eſtate alone of 600 l, or real and perſonal together of the value of 1200 l;

or

or ſon of a perſon having or who had at the time of his death a like eſtate of the yearly value of 60 l, or perſonal eſtate of the value of 1200 l, or real and perſonal together of 2400 l. *Enſign* 20 l; or perſonal eſtate alone of 300 l, or real and perſonal together of 600 l; or ſon of a perſon having or who had at the time of his death a like eſtate of the yearly value of 30 l, or perſonal eſtate of the value of 600 l, or real and perſonal together of 1200 l. One half of all which eſtates, except thoſe for the qualifications of lieutenants and enſigns, ſhall be ſituate or ariſing in their reſpective counties. 2 *G.* 3. *c.* 20. *ſ.* 8. 9 *G.* 3. *c.* 42. *ſ.* 6.

And where 20 deputy lieutenants cannot be found qualified, and willing to act; his majeſty's lieutenant, after having appointed ſo many as can be found qualified, may appoint ſuch number as ſhall be requiſite to make up the number 20, who ſhall be ſeiſed or poſſeſſed of a like eſtate of the yearly value of 100 l, and ſituate as aforeſaid: Provided, that the perſons ſo appointed ſhall not make the whole number to exceed twenty. 2 *G.* 3. *c.* 20. *ſ.* 9. 9 *G.* 3. *c.* 42. *ſ.* 7.

5. In the iſle of *Ely*; a *deputy lieutenant* ſhall be ſeiſed or poſſeſſed of a like eſtate of the yearly value of 150 l, or ſhall be heir apparent to a perſon having a like eſtate of 300 l. *Captain* 100 l; or heir apparent of a perſon having a like eſtate of 200 l; or younger ſon of a perſon who ſhall be, or at the time of his death was, ſeiſed or poſſeſſed of a like eſtate of the yearly value of 300 l. *Lieutenant* 30 l; or perſonal eſtate of 600 l; or ſon of ſome perſon who ſhall be, or at the time of his death was, ſeiſed or poſſeſſed of a like eſtate of 60 l, or perſonal eſtate of 1200 l. *Enſign* 20 l; perſonal eſtate of 300 l; or ſon of ſome perſon who ſhall be, or at the time of his death was, ſeiſed or poſſeſſed of a like eſtate of the yearly value of 30 l, or perſonal eſtate of 600 l. One half of all which eſtates, except thoſe for the qualification of lieutenants and enſigns, ſhall be ſituate or ariſing within the ſaid iſland. 2 *G.* 3. *c.* 20. *ſ.* 10. 9 *G.* 3. *c.* 42. *ſ.* 8. In the Iſle of Ely.

6. In all cities or towns which are counties within themſelves, and have heretofore uſed to raiſe and train a ſeparate militia within their reſpective liberties, and which are united with and made part of any county for the purpoſes of raiſing the militia only; his majeſty's lieutenant of ſuch cities or towns, or where there is no lieutenant appointed by his majeſty, the chief magiſtrate of ſuch city or town, ſhall appoint five or more deputy lieutenants (if ſo many duly qualified can be found), and ſhall alſo appoint In cities or town being counties within themſelves.

point officers of the militia, whose number and rank shall be proportionable to the number of militia men which such city or town shall raise, as their quota towards the militia of the county to which such city or town is united for the purposes aforesaid; and all powers given and provisions made with respect to counties at large, shall take place in the said cities or towns, except only, that after the number of persons which such city or town is to furnish shall have been appointed as aforesaid by his majesty's lieutenant and the deputy lieutenants, or by the deputy lieutenants of the county at large, two deputy lieutenants within such city or town shall have and exercise all the powers conferred on three deputy lieutenants, or two deputy lieutenants together with one justice, or one deputy lieutenant together with two justices, of any county at large: And the qualification for a *deputy lieutenant* shall be 150 l a year as aforesaid; or a personal estate alone, or real and personal estate together to the amount or value of 3000 l. *Field officer* 300 l; or personal estate alone, or real and personal together, to the value of 5000 l. *Captain* 150 l a year; or personal estate alone, or real and personal together, to the value of 2500 l. *Lieutenant* 30 l a year, or personal estate of 750 l. *Ensign* 20 l a year, or personal estate of 400 l. One half of all which real estates (except those for the qualification of lieutenants and ensigns) shall be within such city or town, or within the county at large to which such city or town is united for the purposes aforesaid: And his majesty's lieutenants, and the chief magistrates of such cities or towns being counties within themselves, shall put the powers for raising and training the militia within such cities or towns in execution; but the militia of such cities and towns, being part of the militia of the counties to which such cities and towns are united for the purposes aforesaid, the militia of such cities or towns shall join the militia of the county to which such cities or towns are so united for the purposes aforesaid; and the whole militia so joined together, shall be exercised together at the general exercise; and shall then, and also when drawn out and embodied, be deemed the militia of the county to which such cities or towns are so united. 2 *G.* 3. *c.* 20. *s.* 11: 9 *G.* 3. *c.* 42. *s.* 9.

In the tower hamlets.

7. The qualifications above recited, to enable any person to be a deputy lieutenant, lieutenant colonel, major, captain, lieutenant, or ensign, shall not extend to commissions granted by the constable of the tower, or lieutenant of the tower hamlets. 2 *G.* 3. *c.* 20. *s.* 13.

Promotion on account of merit.

8. When any regiment or battalion ſhall be drawn out and embodied; the lieutenant may, upon account of military merit ſhewn in time of actual invaſion or actual rebellion, promote any officer therein, from a lower to a higher commiſſion, incluſive of that of lieutenant colonel, notwithſtanding he ſhould not have the qualification requiſite for his firſt admittance into ſuch higher rank: Provided, that no perſon, not having the qualification herein before directed for a captain, ſhall be promoted to a higher rank than that of captain. 2 *G.* 3. *c.* 20. *ſ.* 12. 9 *G.* 3. *c.* 42. *ſ.* 13.

Clauſe with reſpect to captain-lieutenants.

9. By the 19 *G.* 3. *c.* 72. his majeſty's lieutenants (or in the abſence of his majeſty's lieutenant out of the kingdom, two deputy lieutenants, 20 *G.* 3. *c.* 44.) may appoint captain-lieutenants to all regiments or battalions, to which ſuch appointment hath not been already made; who ſhall have the ſame qualifications as captains: Provided, that it ſhall not be neceſſary for any perſon having acted as captain-lieutenant before *July* 1, 1779, to hold any other qualification than as a lieutenant. *ſ.* 6, 7.

Diſplacing officers.

10. The king, from time to time, may ſignify his pleaſure to his lieutenant to diſplace any ſuch deputy lieutenants and officers; and thereupon the lieutenant ſhall appoint others in their ſtead. 2 *G.* 3. *c.* 20. *ſ.* 14.

Officer to enter his qualification with the clerk of the peace, and to take the oaths.

11. No deputy lieutenant or commiſſion officer ſhall act as ſuch, until he ſhall have left with the clerk of the peace for the county or place for which he ſhall be ſo appointed, his qualification in writing ſigned by himſelf; and ſuch clerk of the peace ſhall enter the ſame on a roll to be kept for that purpoſe: And every deputy lieutenant and commiſſion officer, not having already taken and ſubſcribed the oaths, and made and ſubſcribed the declaration required by the former militia acts, ſhall at ſome general quarter ſeſſions, or in one of the courts of record at *Weſtminſter*, within ſix months after he ſhall have accepted his commiſſion, take the oaths, and make and ſubſcribe the declaration, as other perſons qualifying for offices. 2 *G.* 3. *c.* 20. *ſ.* 15.

Penalty of acting not being qualified.

12. Deputy lieutenant, colonel, lieutenant colonel, or major, acting, not being qualified, or not delivering in ſuch qualification, and taking the oaths and ſubſcribing the declaration, ſhall forfeit 200*l*; captain, lieutenant, or enſign, 100*l*; half to him who ſhall ſue, and half to the uſes herein after directed. And the proof of the qualification ſhall lie on him againſt whom the action is brought. 2 *G.* 3. *c.* 20. *ſ.* 16, 17.

And moreover, by the 18 *G.* 3. *c.* 59. *ſ.* 27. if any perſon accepting a commiſſion of a higher rank than that of lieutenant, not having already delivered in his qualification, ſhall neglect to deliver in the ſame within ſix months after his accepting the commiſſion; he ſhall be incapable of holding the ſame, and the commiſſion ſhall be void.

Clerk of the peace to tranſmit the entries to the lieutenant.

13. Every colonel, lieutenant colonel, major, captain, or captain lieutenant (except ſuch captain lieutenants as have acted as ſuch before July 1, 1779), not having already tranſmitted to the clerk of the peace of the county in the militia whereof he ſhall ſerve, a true deſcription of his qualification, ſhall, on or before March 1, 1780, or within ſix months after having accepted any ſuch commiſſion in future, tranſmit to the clerk of the peace a true deſcription of his qualification, and alſo a certificate of his taking the oaths required: And the clerk of the peace ſhall forthwith enter and inroll the ſame; and ſhall alſo tranſmit to the lieutenant a true copy of every ſuch qualification and certificate ſo entered as aforeſaid. 19 *G.* 3. *c.* 72. *ſ.* 10. 20 *G.* 3. *c.* 8.

Lieutenant to appoint others in the places of thoſe who have not made ſuch entries.

14. And the lieutenant ſhall (unleſs juſt cauſe be ſhewn to the contrary, within the time by this act limited), on receipt of the ſaid liſts and certificates, give notice to the officers who ſhall not have been certified by the clerk of the peace to have entered their qualifications, that he ſhall proceed to the appointment of other fit perſons, if proper perſons duly qualified ſhall offer themſelves, in the room of ſuch officers as ſhall have omitted ſo to deliver in the ſaid liſts and certificates. And ſuch lieutenant ſhall, within ſix weeks, in the *London* Gazette, declare the commiſſion of ſuch officer to be vacant, and ſhall proceed to ſuch appointment accordingly: And for the better aſcertaining the time of granting ſuch commiſſions, the ſaid lieutenants ſhall, from time to time, cauſe to be inſerted in the *London* Gazette, the dates of the commiſſions, and names and rank of the officers, together with the names of the officers in whoſe ſtead they are ſo commiſſioned; in like manner as commiſſions in the army are publiſhed from the war office. *id.*

[But by the 20 *G.* 3. *c.* 8. in caſe any ſuch colonel, lieutenant colonel, major, captain, or officer of militia, hath neglected or omitted to deliver in his qualification, or to tranſmit to the clerk of the peace a true deſcription of ſuch qualification, and alſo a certificate of his having taken the oaths required, he ſhall be indemnified from the aforeſaid penalties (notwithſtanding ſuch neglect or omiſſion);

and all acts done by him in virtue of his commiſſion, are declared to be valid and of full effect.]

15. And the ſaid clerks of the peace ſhall, on or before the firſt day of *December* every year, tranſmit to a ſecretary of ſtate, in order to be laid before parliament, true copies of all entries made and inrolled, and alſo accounts of all returns ſo tranſmitted by them to the ſaid lieutenants, together with the dates of the ſaid entries and returns. And every clerk of the peace guilty of any neglect herein, ſhall be liable to the ſame penalties as by the militia laws now in being are impoſed on clerks of the peace for any neglect of duty. 19 *G.* 3. *c.* 72. *ſ.* 10. [That is to ſay, he ſhall forfeit 500l to him who ſhall ſue, and ſhall alſo forfeit his office, and be incapable of holding any office of truſt under the government. 9 *G.* 3. *c.* 42. *ſ.* 42.] Clerk of the peace to make annual returns of the entries to a ſecretary of ſtate.

16. Provided that nothing herein ſhall extend to reſtrain the lieutenant from appointing any peer of this realm, or his heir apparent, to be a deputy lieutenant or commiſſion officer, within the county or place wherein he ſhall have ſome place of reſidence; or to oblige any peer or heir apparent of ſuch peer (ſo appointed) to leave his qualification with the clerk of the peace: But it ſhall be lawful for him taking the oaths, and making and ſubſcribing the declaration aforeſaid, to act, although he ſhall not have ſuch eſtate in manors, meſſuages, lands, tenements or hereditaments, as is above required. 2 *G.* 3. *c.* 20. *ſ.* 18. Exception as to peers.

17. Provided alſo, that the acceptance of a commiſſion in the militia, ſhall not vacate the ſeat of any member returned to ſerve in parliament. 2 *G.* 3. *c.* 20. *ſ.* 19. Commiſſion not to vacate a ſeat in parliament.

18. His majeſty's lieutenant, together with three deputy lieutenants, and on the death or removal or in the abſence of his majeſty's lieutenant, any five deputy lieutenants, ſhall, at the end of every four years, at their annual meeting, in caſe the militia of ſuch county or place ſhall not be then embodied, diſcharge ſome one field officer of each regiment or battalion, and ſuch a number of officers of each inferior rank, as ſhall be equal to the number of perſons who ſhall have given notice in writing to his majeſty's lieutenant, one month at leaſt before ſuch meeting, that they are willing to ſerve as field officers, captains, lieutenants, or enſigns, as the caſe may require: Provided, that the number of vacancies to be made ſhall not exceed one third of ſuch officers who ſhall have ſerved for four years in each rank reſpectively: Provided alſo, that nothing herein ſhall prevent any officer who has ſerved four years, from offering himſelf to ſerve in a higher How long the officer ſhall continue

rank, if he be qualified as this act requires to ſerve in ſuch higher rank. 2 *G.* 3. *c.* 20. *ſ.* 30, 1, 2.

Diſtribution of officers in caſe of vacancies.

19. And whereas it is proper that officers ſhould be appointed to ſuch companies of any county, riding, or place, as are raiſed in thoſe diſtricts near which ſuch officers do reſpectively reſide; it is enacted, that when the command of companies, or other commiſſioners, do become vacant by reſignation or otherwiſe, the lieutenant ſhall make ſuch a diſtribution of officers to the reſpective companies as he ſhall judge moſt fit and proper. 11 *G.* 3. *c.* 32. *ſ.* 24.

Lieutenant may act as colonel.

20. It ſhall be lawful for his majeſty's lieutenant to act as colonel of any regiment or battalion, during ſuch time as there ſhall not be any colonel; but no lieutenant ſhall act at any one time as colonel to more than one regiment or battalion. 2 *G.* 3. *c.* 20. *ſ.* 28.

And where the lieutenant ſhall ſerve as colonel to any body of militia by this act deemed a battalion only; he ſhall not, when ſuch battalion ſhall be embodied and in actual ſervice, receive any other pay than that of a lieutenant colonel: and no other perſon ſhall ſerve or be intitled to pay as a lieutenant colonel in ſuch battalion, during the time that the ſaid lieutenant ſhall ſerve as colonel. *ſ.* 29.

Adjutant.

21. His majeſty may appoint one proper perſon, who ſhall have ſerved, or at the time of ſuch appointment ſhall actually ſerve, in ſome of his majeſty's other forces, or in any corps of militia that has been drawn out and embodied, to be an adjutant to each regiment, battalion, or independent company; and ſuch adjutant, if appointed out of his majeſty's other forces, ſhall, during his ſervice in the militia, preſerve his rank in the army, in the ſame manner as if he had continued in that ſervice; and the lieutenant may grant to the adjutant a commiſſion of lieutenant, or any inferior commiſſion, although ſuch adjutant ſhall not have an eſtate to qualify him for ſuch commiſſion as is required by this act. 2 *G.* 3. *c.* 20. *ſ.* 33.

Serjeant.

22. His majeſty may appoint, according to the proportion of one ſerjeant to 20 private men, two or more ſerjeants to each company, out of his other forces; ſuch perſons having ſerved in the ſaid forces for one year next preceding ſuch appointment; or may appoint ſuch other perſons to be ſerjeants, as have formerly ſerved for one year in his ſaid forces; or out of any corps of militia that has been drawn out and embodied: which ſerjeants ſo appointed, ſhall take the following oath,

I A.B.

I A. B. *do ſincerely promiſe and ſwear, that I will be faithful and bear true allegiance to his majeſty king* George, *his heirs and ſucceſſors: and I do ſwear, that I am a proteſtant, and that I will faithfully ſerve as a ſerjeant in the militia, within the kingdom of* Great Britain, *for the defence of the ſame, until I ſhall be legally diſcharged.* 2 G. 3. c. 20. ſ. 36.

And the colonel, or where there is no colonel the lieutenant colonel, or where there is no colonel or lieutenant colonel, the major, ſhall appoint a ſerjeant major out of the ſerjeants. *id.*

And the ſervice in the militia of ſuch perſons ſo appointed out of his majeſty's other forces, ſhall intitle them to the benefit of *Chelſea* hoſpital, in the ſame manner as if they had continued to ſerve in the ſaid forces; and every perſon appointed to be a ſerjeant out of the penſioners on the eſtabliſhment of *Chelſea* hoſpital, ſhall be put again upon the ſaid eſtabliſhment after his diſcharge from the militia, provided he brings a certificate of his good behaviour under the hand of the colonel or commanding officer. *id.*

And by the 18 *G.* 3. *c.* 59. any perſon being a ſerjeant on the eſtabliſhment of *Chelſea* hoſpital, at an allowance of 12d a day, and being appointed to ſerve in the militia, ſhall receive the ſaid allowance of 12d a day, together with his pay from the militia. *ſ.* 19.

And the captain of every company (with the approbation of the colonel, or where there is no colonel, of the lieutenant colonel, or where there is no lieutenant colonel, of the major of the regiment or battalion) ſhall appoint ſerjeants out of the private men, to fill up vacancies; who ſhall take the like oath as ſerjeants appointed by his majeſty (which oath any one deputy lieutenant, or if the regiment or battalion ſhall be embodied and in another county, riding or place, any one juſtice there may adminiſter). 2 *G.* 3. *c.* 20. *ſ.* 38.

And any perſon who hath faithfully ſerved as a ſerjeant in any one corps of militia for fifteen years, and who ſhall be diſcharged from the ſame on account of his age or infirmities, during the time that the corps ſhall be in actual ſervice, ſhall on the recommendation of the commanding officer, and the lord lieutenant or deputy lieutenants reſpectively, be intitled to examination at the *Chelſea* board, and be capable to be placed on the penſion of 5d a day. 18 *G.* 3. *c.* 59. *ſ.* 18.

But no perſon who ſhall keep any houſe of publick entertainment, or who ſhall ſell any ale, wine, brandy, or

other ſpirituous liquors by retail, ſhall be capable of being appointed or continuing a ſerjeant in the militia. 2 G. 3. c. 20. ſ. 37.

And it ſhall be lawful for the commanding officer of any regiment or battalion, being a field officer, on the application of the captain to diſplace ſerjeants. ſ. 38.

Provided, that if any perſon who is or ſhall be appointed out of his majeſty's other forces, to be a ſerjeant in the militia, and ſhall be for any miſbehaviour reduced into the ranks, ſhall not within one month after ſuch reduction be reſtored; he ſhall be returned to the company from which he was taken in his majeſty's other forces, and ſhall there ſerve as a private man; and any perſon appointed a ſerjeant in the militia out of any company of militia, may be reduced into the ranks for miſbehaviour, and ſhall ſerve there till he ſhall have compleated his three years ſervice as a private militia man; and if there ſhall be no vacancy in the company from whence he was taken, he ſhall ſerve in any other company of the regiment or battalion. ſ. 39.

And by the 18 G. 3. c. 59. Any ſerjeant, who ſhall by the commanding officer, or the ſentence of a court martial, for his miſbehaviour, be reduced into the ranks, ſhall, beſides the puniſhment inflicted by the court martial, be obliged to ſerve as a private militia man for one year, notwithſtanding he may have already ſerved three years before his being appointed ſerjeant. ſ. 20.

Corporal.

23. The captain of every company may appoint corporals out of the private men of his company, in the proportion of one corporal to twenty private men; and may diſplace ſuch corporals for miſbehaviour, and appoint others, as he ſhall ſee occaſion. 2 G. 3. c. 20. ſ. 38.

Drummer, and fifer.

24. And the captain alſo may appoint two perſons to be drummers or fifers to his company. And the colonel, or where there is no colonel the lieutenant colonel, or where there is no colonel or lieutenant colonel the major, ſhall appoint a drum major out of the drummers. Which drummers and fifers, when ſo appointed, and having received any pay as ſuch, ſhall be deemed to be engaged, and compellable to ſerve in the ſame regiment or battalion, until legally diſcharged. And ſuch captain may diſplace ſuch drummers or fifers for miſbehaviour, and appoint others in their room. 2 G. 3. c. 20. ſ. 36, 38.

Serjeant, drummer, or fifer inliſting.

25. If any ſerjeant, drummer, or fifer, ſhall inliſt, in any of his majeſty's other forces; ſuch inliſting ſhall be void. 2 G. 3. c. 20. ſ. 40.

26. His

26. His majeſty's lieutenants ſhall appoint a clerk for the general meetings; and may diſplace ſuch clerk, if he think fit, and appoint another in his room. 2 *G.* 3. *c.* 20. *ſ.* 90. Clerks of the meetings.

And the deputy lieutenants within their ſubdiviſions, ſhall appoint a clerk for their reſpective ſubdiviſion; and may diſplace him if they think fit, and appoint another in his room. *id.*

27. His majeſty's lieutenant ſhall from time to time, as occaſion ſhall require, appoint a clerk to each regiment or battalion. 2 *G.* 3. *c.* 20. *ſ.* 36. Clerk of the regiment or battalion.

And by another clauſe in the ſaid act, when any regiment or battalion ſhall be unembodied, the colonel, or where there is no colonel the commanding officer, ſhall appoint a regimental clerk to ſuch regiment or battalion. *ſ.* 98.

But by the 18 *G.* 3. *c.* 59. No perſon ſerving as quarter-maſter, ſurgeon, or battalion clerk, ſhall, from the time of paſſing this act, be appointed to any other commiſſion in the militia higher than that of a lieutenant, during the time he acts as ſuch, though he have ſuch qualification as the law requires for ſuch higher commiſſion. *ſ.* 7.

28. When any regiment or battalion ſhall be embodied, and during the time they ſhall continue embodied, the colonel, or where there is no colonel the commanding officer, ſhall appoint an agent; and take ſecurity from ſuch agent; and ſuch colonel or commanding officer reſpectively ſhall be liable to make good all deficiencies on account of the pay, cloathing, or publick ſtock. 2 *G.* 3. *c.* 20. *ſ.* 119. Agent.

II. Number of men to be raiſed in the ſeveral counties.

1. By the 2 *G.* 3. *c.* 20. *ſ.* 41. the number of private men to be raiſed (excluſive of the places herein after excepted) ſhall be as follows: Number of private men.

For the county of Bedford	400
Berks	560
Bucks	560
Cambridge	480
Cheſter, with the city and county of the city of Cheſter	560
Cornwall	640
Cumberland	320
Derby	560

Devon,

Devon, with the city and county of the city of Exeter	1600
Dorſet, with the iſland of Purbeck, and the town and county of the town of Poole	640
Durham	400
Eſſex	960
Glouceſter, with the city and county of the city of Briſtol	960
Hereford	480
Hertford	560
Huntingdon	320
Kent, with the city and county of the city of Canterbury	960
Lancaſter	800
Leiceſter	560
Lincoln, with the city and county of the city of Lincoln	1200
Middleſex (excluſive of the tower hamlets)	1600
Monmouth	240
Norfolk, with the city and county of the city of Norwich	960
Northampton	640
Northumberland, with the town and county of the town of Newcaſtle, and town of Berwick	560
Nottingham, with the town and county of the town of Nottingham	480
Oxford	560
Rutland	120
Salop	640
Somerſet	840
Southampton, with the town and county of the town of Southampton	960
Stafford, with the city and county of the city of Litchfield	560
Suffolk	960
Surrey	800
Suſſex	800
Warwick, with the city and county of the city of Coventry	640
Weſtmorland	240
Worceſter, with the city and county of the city of Worceſter	560
Wilts	800
York, Weſt Riding, with the city and county of the city of York	1240
—— North Riding	720
—— Eaſt	

— East Riding, with the town and county of the town of Kingſton	400
Angleſea	80
Brecknock	160
Cardigan	120
Caermarthen	200
Caernarvon	80
Denbigh	280
Flint	120
Glamorgan	360
Merioneth	80
Montgomery	240
Pembroke	160
Radnor	120
Total	30,740

Proportioned in the ſeveral counties.

2. His majeſty's lieutenant ſhall tranſmit to the privy council, from time to time, a true ſtate of the numbers of perſons fit to ſerve in the militia for the county or place of which he is lieutenant; and after all the ſaid numbers ſhall be ſo tranſmitted to the privy council, the ſaid council ſhall fix and ſettle, as near as may be, the number of private militia men, who ſhall for the future ſerve for each county, riding, or place, within that part of *Great Britain* aforeſaid, by the proportion which the numbers returned for each county, riding, or place bear to the whole number of private militia men directed to be raiſed within that part of *Great Britain* aforeſaid; and forthwith tranſmit accounts of the numbers ſo fixed and ſettled to all his majeſty's lieutenants of the ſeveral counties and places reſpectively.

And where the number of private militia men ſo fixed and ſettled as aforeſaid, ſhall be reſpectively greater than the number of private militia men, who ſhall have been by virtue of this act appointed to ſerve for any county, riding, or place; in ſuch caſe, his majeſty's lieutenant together with two deputy lieutenants, or in the abſence of his majeſty's lieutenant, three deputy lieutenants, ſhall at a meeting to be held for that purpoſe, appoint what number of private militia men ſhall ſerve for each reſpective hundred, rape, lathe, wapentake, or other diviſion, within the county, riding, or place, to which they belong; and the additional number of private militia men to make up the whole number ſo fixed and ſettled as aforeſaid, ſhall be provided or choſen, and ſworn and inrolled, in like manner as all other private militia men. And where the number of private militia men ſo fixed and ſettled as aforeſaid, ſhall be reſpectively leſs than the number

number of private militia men, who ſhall be by virtue of this act appointed to ſerve for any county, riding, or place; in ſuch caſe, his majeſty's lieutenant, together with two deputy lieutenants, and on the death or removal, or in the abſence of his majeſty's lieutenant, three deputy lieutenants, ſhall at a general meeting to be held for that purpoſe, diſcharge by lot proportionably out of each reſpective hundred, rape, lathe, wapentake, or other diviſion, ſo many private militia men as ſhall exceed the number ſo fixed and ſettled as aforeſaid. 2 *G.* 3. *c.* 20. *ſ.* 74, 96.

III. Iſſuing precepts to return liſts.

A general meeting to be had.

1. Where the militia has been, or ſhall be raiſed, there ſhall be a general meeting yearly on the laſt Tueſday in May, or the laſt Tueſday in October. 2 *G.* 3. *c.* 20. *ſ.* 57.

And if there ſhall happen to be no meeting on ſuch day, his majeſty's lieutenant, together with two deputy lieutenants, and on the death or removal or in the abſence of his majeſty's lieutenant three deputy lieutenants, when and as often as they ſhall find neceſſary, may ſummon or cauſe to be ſummoned a general meeting, on a day to be fixed by ſuch ſummons; of which day and place, notice ſhall be given in the *London* Gazette, and alſo in any weekly paper uſually circulated in ſuch county, fourteen days at leaſt before the holding of ſuch meeting. 4 *G.* 3. *c.* 17. *ſ.* 1.

Note, generally, that the general meetings are to conſiſt of the lieutenant, together with two deputy lieutenants; or, on the death, or removal, or in the abſence of the lieutenant, of three deputy lieutenants.

But within the ſmaller counties, to wit, of *Cumberland*, *Huntingdon*, *Monmouth*, *Weſtmorland*, *Rutland*, and all the counties in *Wales*, two deputy lieutenants with one juſtice, or one deputy lieutenant with two juſtices, may exerciſe all the powers conferred by this act on three deputy lieutenants in other places. *ſ.* 91.

Subdiviſion meetings to be appointed.

2. At which general meeting, they ſhall appoint the times and places for holding four or more ſubdiviſion meetings in each year; which ſubdiviſion meetings they may change or alter at any time, at any general meeting to be held after reaſonable notice thereof given. 2 *G.* 3. *c.* 20. *ſ.* 57, 65.

Alſo for the purpoſe of filling up any vacancy or vacancies, occaſioned by death or otherwiſe; the deputy lieutenants and juſtices as aforeſaid may appoint a ſubdiviſion

viſion meeting for filling up ſuch vacancy or vacancies, giving ſeven days notice thereof. 2 *G.* 3. *c.* 20. *ſ.* 60.

Note, The ſubdiviſion meetings are to conſiſt of three deputy lieutenants, or two deputy lieutenants together with one juſtice, or one deputy lieutenant together with two juſtices.

Except that where the militia is on actual ſervice; in which caſe two deputy lieutenants, or one deputy lieutenant and one juſtice, may exerciſe all the powers conferred by the 2 *G.* 3. *c.* 20. on three deputy lieutenants, or two deputy lieutenants with one juſtice, or one deputy lieutenant with two juſtices, and may adjourn themſelves from time to time as they ſhall ſee proper. 18 *G.* 3. *c.* 59. *ſ.* 11.

And whereas by the ſaid act of 2 *G.* 3. *c.* 20. four ſubdiviſion meetings ſhall, on the laſt *Tueſday* in *May*, or the laſt *Tueſday* in *October*, be appointed for the purpoſes of the ſaid act, and ſeveral directions, proviſions, and penalties are contained in the ſaid act, reſpecting the balloting, inrolling, and providing ſubſtitutes, and for other purpoſes, to be done at ſuch four ſubdiviſion meetings; and whereas ſubdiviſion meetings are likewiſe by the ſaid act directed to be held, upon ſeven days notice being given, for filling up vacancies, and for other purpoſes therein mentioned; but doubts have ariſen, whether the ſeveral powers, proviſions, and penalties in the ſaid act contained, can extend to enforce the orders made at any other ſubdiviſion meeting than at the four that may be appointed by the general meetings on the laſt *Tueſday* in *May*, or on the laſt *Tueſday* in *October*: It is therefore enacted, that in all caſes where ballots are directed to be taken by any of the laws relating to the militia, every perſon choſen purſuant to the ſaid acts, at any ſubdiviſion meeting thereby appointed, ſhall be inrolled, and every ſubſtitute provided ſhall ſubſcribe his conſent to ſerve, and ſhall ſerve for three years, and be liable and ſubject to all the ſeveral directions, proviſions, and penalties in the ſaid herein before recited act of 2 *G.* 3. or in any other act relating to the militia of this kingdom. 19 *G.* 3. *c.* 72. *ſ.* 20.

3. After the appointment of any ſubdiviſion meeting, the clerk of ſuch meeting ſhall give reaſonable notice in writing, of the time and place appointed for the ſame, to every deputy lieutenant and juſtice reſident within the ſaid ſubdiviſion; and alſo to the commanding officer of the regiment, if on actual ſervice, or, if not on actual ſervice, to the colonel thereof, an account of the days fixed for receiving liſts, and for balloting, and ſwearing in

Notice to be given of ſubdiviſion meetings.

in the men; and ſhall, as ſoon as the men are ſworn in, likewiſe tranſmit to the commanding officer or colonel as aforeſaid, a liſt, ſpecifying the names, trades and uſual places of abode, of ſuch men as are ſworn, and, if ſubſtitutes, the names, trades, and places of abode, of the principals in the room of whom they were ſworn. 19 *G.* 3. *c.* 72. *ſ.* 19.

But notwithſtanding the appointment of ſubdiviſion meetings, it ſhall be lawful for any deputy lieutenant, or juſtice, to act in any and every ſubdiviſion within the county, riding or place. 2 *G.* 3. *c.* 20. *ſ.* 89.

Sufficient number not appearing to act.

4. If there ſhall not appear at any *ſubdiviſion* meeting, a ſufficient number of deputy lieutenants and juſtices to act; the clerk ſhall by notice given in writing to all the deputy lieutenants within ſuch ſubdiviſion, or left at their reſpective places of abode, appoint another meeting to be held within 14 days, at the ſame place where ſuch meeting had been before appointed to be held, giving at leaſt five days notice thereof. 2 *G.* 3. *c.* 20. *ſ.* 92.

And if a ſufficient number ſhall not attend at a *general* meeting, two deputy lieutenants or one deputy lieutenant attending at ſuch meeting may adjourn to any other time or place; and if no deputy lieutenant ſhall attend, the clerk of the general meeting, or his deputy there attending, may adjourn in like manner. *ſ.* 23.

Precepts to be iſſued for returning liſts.

3. At the ſaid firſt general meeting, they ſhall iſſue (A) their orders to the chief conſtable, and where there is no chief conſtable, to ſome other officer of the ſeveral hundreds, rapes, laths, wapentakes, or other diviſions, to require by orders under their hands the conſtable or other ſuch officer, of each pariſh, tithing or place, to return to the deputy lieutenants within the ſubdiviſions, at the place and on the day appointed at the ſaid firſt general meeting, fair and true liſts in writing, of the names of all the men uſually and at that time dwelling within their reſpective pariſhes, tithings and places, between the ages of 18 and 45 years, diſtinguiſhing their reſpective ranks and occupations; and which of the perſons ſo returned labour under any infirmities, incapacitating them from ſerving; having firſt affixed a true copy of ſuch liſt on the door of the church or chapel, and if any place have no church or chapel, then on the door of the church or chapel of ſome pariſh or place thereto adjoining, on ſome Sunday morning before they ſhall make ſuch return, which Sunday ſhall be three days at the leaſt before the ſaid meeting; and alſo notice in writing, at the bottom of ſuch liſt, of the day and place of

of ſuch meeting, and that all perſons who ſhall think themſelves aggrieved, may then appeal, and that no appeal will be afterwards received. 2 *G.* 3. *c.* 20. *ſ.* 42.

Perſons refuſing to tell their names.

4. Where the true names of ſuch perſons cannot be procured, the common appellation of ſuch perſons ſhall be ſufficient. And if any perſon ſhall refuſe to tell his chriſtian and ſurname, or the chriſtian and ſurname of any man lodging or reſiding within his houſe, to any conſtable or other officer authoriſed by this act to demand the ſame, he ſhall forfeit 10 l. 2 *G.* 3. *c.* 20. *ſ.* 42, 72.

Perſons exempted.

5. Provided, that no peer of this realm, nor any perſon who ſhall ſerve as a commiſſion officer in his majeſty's other forces, or in any of his caſtles or forts; nor any non-commiſſion officer, or private man ſerving in any of his majeſty's other forces; nor any commiſſion officer ſerving, or who has ſerved, four years in the militia; nor any perſon being a member of either of the univerſities; nor any clergyman; nor any *licenſed teacher of any ſeparate congregation*; nor any conſtable, or other ſuch peace officer; nor any *articled clerk*, apprentice, ſeaman or ſeafaring man; nor any perſon muſtering and doing duty in any of his majeſty's dock yards; nor any perſon free of the company of watermen of the river *Thames*; nor any perſon employed and muſtered at the *Tower* of London, Woolwich warren, the ſeveral gun-wharfs at Portſmouth, Chatham, Sheerneſs, and Plymouth, or at the powder mills, magazines, or ſtorehouſes under the direction of the board of ordnance; nor any poor man who has three children born in wedlock; ſhall be compelled to ſerve perſonally, or to provide a ſubſtitute. 2 *G.* 3. *c.* 20. *ſ.* 43. 18 *G.* 3. *c* 59. *ſ.* 16, 17.

Licenſed teachers of any ſeparate congregation] By the 19 *G.* 3. *c.* 44. Every perſon diſſenting from the church of *England*, in holy orders, or pretended holy orders, or pretending to holy orders, being a teacher or preacher of any congregation of diſſenting proteſtants, who ſhall, at the general ſeſſions of the place where he lives, take the oaths of allegiance, ſupremacy, and abjuration, and ſubſcribe the declaration againſt popery of the 30 *C.* 2, and a declaration that he is a chriſtian, and a proteſtant, and believes the doctrine of the old and new teſtament, ſhall be exempted from ſerving in the militia of this kingdom.—And the clerk of the peace's certificate thereof ſeems to be that which denominates him a *licenſed* teacher.

Articled clerk] *H.* 17 *G.* 3. In the common pleas: *Gerard*'s caſe. A writ of privilege was moved for, to exempt

exempt Mr. *Gerard* an attorney and one of the ſecondaries of the court, from ſerving as a militia man in the Weſt regiment of the Middleſex militia, into which he had been balloted. And the court granted a rule to ſhew cauſe, to be ſerved on the clerk to the deputy lieutenants. On ſhewing cauſe, it was urged in ſupport of the rule, that articled clerks being exempted by name, much more ought the attornies themſelves to be exempted; for to what purpoſe are the clerks exempted, if their maſter is liable to be taken from them? And certain caſes were mentioned relating to the militia upon the old eſtabliſhment, particularly with reſpect to the *London* trained bands, where the ſaid privilege was allowed. Againſt the rule, it was contended, that the privilege of the court extends only to exempt its officers from *perſonal* duties; that this is not a *perſonal* duty, but a *pecuniary* one, for if the party doth not chuſe to ſerve, he may pay 10l.——And by the court, after great deliberation, the true diſtinction is, whether this is a *perſonal* or *pecuniary* duty. It is beyond a doubt, that privilege extends to all caſes of perſonal ſervice, tho' impoſed by acts of parliament and in the moſt comprehenſive words, unleſs clearly expreſſing the ſenſe of the legiſlature to the contrary: As in the caſes of conſtables and tythingmen, officers under commiſſioners of ſewers, overſeers of the poor, collectors of ſubſidies, watch and ward. The only queſtion therefore is, whether this be a *perſonal* ſervice. And we are all of opinion, that it is not a *perſonal*, but only a *pecuniary* ſervice, becauſe it may, at the option of the party balloted, be commuted for a certain ſum of money, namely 10l; which ſum is to be laid out in providing a ſubſtitute for the defaulter, who by payment of the ſaid money ſtands totally diſcharged for three years. He has therefore three options allowed him, to ſerve perſonally, to find a ſubſtitute, or to pay 10l. This is the whole of his charge; for altho' in times of diſtreſs and neceſſity, the current price of a ſubſtitute ſhould be 50l, the perſon balloted may be excuſed for 10l. It is therefore not a penalty for the neglect of finding a ſubſtitute, for it may be leſs than tne expence of hiring one; but it is clearly a commutation. And this diſtinguiſhes the caſe moſt materially from that of the *London* trained bands, and the ancient commiſſions of array; where, if the party did not, or was not permitted, to find a deputy, he was obliged to ſerve in perſon, under an unlimited penalty, ſometimes of impriſonment, ſometimes of the forfeiture of all that he had. And the court were unanimous, that in this caſe the privilege ſhould not be allowed. *Black. Rep.* 1123.

6. And

6. And if the deputy lieutenants and juſtices at any ſubdiviſion meeting, ſhall receive information, or ſuſpect, that any perſon inſerted in any liſt, deſcribed as an apprentice, has been fraudulently bound in order to avoid ſerving; they may inquire into ſuch binding, and ſummon witneſſes, and examine them on oath: And if ſuch fraud ſhall appear, they may appoint ſuch perſon ſo bound apprentice, to ſerve immediately in the militia of the place for which ſuch liſt was returned, if there be a vacancy; if not, then on the firſt vacancy that ſhall happen therein: And the perſon to whom ſuch apprentice ſhall be ſo bound, ſhall forfeit 10 l; which, if not forthwith paid, ſhall be levied by diſtreſs: half to the informer, if any; and the other half, or, if there ſhall be no informer, then the whole, to be applied in manner hereafter mentioned. 2 *G.* 3. *c.* 20. *ſ.* 73. Fraudulent apprenticeſhip.

7. If any chief conſtable, conſtable, or other officer, ſhall refuſe or neglect to return ſuch liſt, or to comply with ſuch orders as he ſhall receive from the lieutenant, deputy lieutenants, and juſtices, in purſuance of this act; or ſhall in making ſuch return be guilty of any fraud or wilful partiality; any three deputy lieutenants, or two deputy lieutenants with one juſtice, or one deputy lieutenant with two juſtices, may impriſon him in the common gaol for one month, or at their diſcretion may fine him in any ſum not exceeding 5 l, nor under 40 s, by diſtreſs. 2 *G.* 3. *c.* 20. *ſ.* 71. Liſt fraudulent.

And any perſon who ſhall by gratuity, gift, or reward, or by promiſe thereof, or of any indemnification, or by menaces, endeavour to prevail on any conſtable or other officer to make a falſe return, or to eraſe or leave out the name of any perſon who ought to be returned; he ſhall forfeit 50 l, to him who ſhall ſue. *ſ.* 72.

8. If the liſt of any pariſh or place ſhall be loſt or deſtroyed; the deputy lieutenants and juſtices, in their ſubdiviſions, may cauſe a new liſt to be made and returned to them at their next ſubdiviſion meeting, in like manner as the former was. 2 *G.* 3. *c.* 20. *ſ.* 58. Liſt loſt.

9. At the ſaid firſt meeting, ſhall be appointed alſo, the time and place of a ſecond general meeting, for proportioning the number in the ſeveral hundreds or other large diviſions. 2 *G.* 3. *c.* 20. *ſ.* 42. Second general meeting appointed.

IV. Returning and ſettling of the liſts.

Liſt to be returned upon oath.

1. On the day and at the place appointed for the firſt ſubdiviſion meeting as aforeſaid, for the return of the liſts, the conſtables or other officers reſpectively ſhall attend, and verify their return upon oath. 2 *G.* 3. *c.* 20. *ſ.* 42.

Appeals to be heard, and liſts amended.

2. And the deputy lieutenants and juſtices, ſo aſſembled in their ſubdiviſions, ſhall (after hearing any perſon who ſhall think himſelf aggrieved, by having his name inſerted, or by any others being omitted) direct ſuch liſts to be amended as the caſe ſhall require; and alſo the names of all perſons by this act excepted, to be ſtruck out of the ſaid liſts. 2 *G.* 3. *c.* 20. *ſ.* 42.

Caſe where a perſon hath two places of abode.

3. A perſon having more than one place of reſidence, ſhall be deemed to reſide only, and ſhall ſerve, within the county or place, where his name ſhall have been firſt inſerted in a liſt, and returned; and the clerk to the ſubdiviſion meeting to which ſuch liſt ſhall be returned, ſhall on requeſt grant a certificate *gratis*, that ſuch perſon's name was inſerted in ſuch liſt, ſpecifying the times when ſuch liſt was made and returned. 2 *G.* 3. *c.* 20. *ſ.* 94.

Time appointed for a ſecond ſubdiviſion meeting.

4. And at the ſaid firſt ſubdiviſion meeting they ſhall appoint a time and place for the ſecond meeting within the ſubdiviſions; for proportioning the numbers in the ſeveral pariſhes and townſhips, after they ſhall have been firſt proportioned, at the ſecond general meeting, in the hundreds, rapes, and other large diviſions. 2 *G* 3. *c.* 20. *ſ.* 42.

Liſts to be returned to the ſecond general meeting.

5. For which purpoſe, they ſhall alſo, at the ſaid firſt ſubdiviſion meeting, return to the ſecond general meeting, all the liſts of the ſeveral pariſhes, tithings, and places, ſo amended as aforeſaid, that the men may be by them proportioned in the ſeveral larger diviſions as aforeſaid. 2 *G.* 3. *c.* 20. *ſ.* 42.

V. Proportioning the numbers in the ſeveral hundreds or other large diviſions.

Numbers proportioned in the ſeveral hundreds.

1. At the ſecond general meeting as aforeſaid, they ſhall appoint what number of men in each reſpective hundred, rape, lath, wapentake, or other diviſion, ſhall ſerve in the ſaid militia, towards raiſing the number of men by this act directed to be raiſed for ſuch reſpective county,

county, riding, or place, in proportion to the whole number contained in such list. 2 G. 3. c. 20. s. 42.

2. And if it shall appear at any time to the general meeting, that the distribution by them made amongst the several hundreds and other like divisions, was either unequally or erroneously made, or, from any subsequent alteration of circumstances, is become unequal and disproportionable; they may make a new distribution in like manner as at first. 2 G. 3. c. 20. s. 75. The same may be altered from time to time.

3. At the said second general meeting, they shall order copies to be made of all the said lists; and such copies to be returned to the second subdivision meetings. 2 G. 3. c. 20. s. 42. Copies to be transmitted to the second subdivision meetings.

VI. Proportioning in the several parishes, tithings, or places.

1. At the second subdivision meeting as aforesaid, the deputy lieutenants and justices shall appoint what number of men shall serve for each parish, tithing, and place; in proportion to the number appointed at the second general meeting to serve for each hundred, rape, lath, wapentake, or other division. 2 G. 3. c. 20. s. 42. Proportioning in the several parishes or places.

2. And they may add together, whensoever they shall think necessary, the lists for two or more parishes, tithings, or places; and proceed upon such lists added together, so as to make the choice of militia men by lot as equal and impartial as possible. 2 G. 3. c. 20. s. 44. Two or more parishes or places may be joined.

3. And they shall issue out an order (B) to the chief constable or other officer of the respective hundreds or other divisions, requiring them to give notice to the constable or other like officer of each parish, tithing, or place, of the men appointed to serve for such respective parish, tithing, or place; and of the time and place of the subdivision meeting, for chusing the men by lot. 2 G. 3. c. 20. s. 42. Notice to be given for balloting.

VII. Balloting.

1. If at any of the subdivision meetings, any private militia man shall shew just cause for his discharge, and being embodied shall likewise produce a regular discharge from his commanding officer; the deputy lieutenants and justices shall and may discharge him: And in the stead of the persons so discharged, and also if there shall be any other vacancy by death or otherwise, they shall, after having amended the lists in the same manner as is afore- Balloting.

ſaid, cauſe a like number to be choſen by lot (except as as hereafter excepted) out of the liſts of ſuch places where the vacancies ſhall happen. 2 *G.* 3. *c.* 20. *ſ.* 59.

Vacancy by diſcharge.

2. And by the 19 *G.* 3. *c.* 72. Whereas by the ſaid act of 2 *G.* 3. *c.* 20. certain powers are granted to deputy lieutenants and juſtices to hold ſubdiviſion meetings, and to order freſh ballots for the purpoſe of filling up vacancies, giving ſeven days notice of ſuch meetings; and doubts have ariſen to what caſes of vacancies ſuch powers extend: It is therefore enacted, that the ſaid deputy lieutenants and juſtices ſhall, and are required, in all caſes, when a regular diſcharge of any militia man ſhall be produced to them, from any commanding officer, certifying the reaſon of ſuch diſcharge, and that ſuch reaſon renders him unfit for ſervice, to proceed to confirm the ſame, and alſo to cauſe the liſts to be amended, and other perſons to be choſen to fill up ſuch vacancies. *ſ.* 23.

Vacancy by deſertion.

3. And if any militia man ſhall abſcond, deſert, or abſent himſelf, and not return or be taken in three months; then, on certificate thereof from the commanding officer to the deputy lieutenants and juſtices of the diviſion, they ſhall hold a ſubdiviſion meeting, and ballot another: And if ſuch abſentee ſhall at any time return or be taken, he ſhall, notwithſtanding another being choſen to ſerve in his room, be compelled to ſerve out the remainder of his time. 18 *G.* 3. *c.* 59. *ſ.* 14.

Pariſhes may offer volunteers, without balloting.

4. Provided, that if the churchwardens or overſeers of any pariſh, tithing or place, or of two or more pariſhes, tithings or places ſo added together as aforeſaid, ſhall, with the conſent of the inhabitants of the pariſh or pariſhes, townſhip or townſhips, hamlet, or place, taken at a veſtry, or at any other meeting, for ſuch pariſh, townſhip, hamlet or place, to be holden for that purpoſe, provide and produce any volunteer or volunteers, and ſuch volunteers ſhould be approved by the ſaid deputy lieutenants and juſtices; they ſhall be then and there ſworn in and inrolled: and only ſo many ſhall be choſen by lot, as ſhall be wanted to make up the whole number to ſerve for ſuch pariſh, tithing or place, or pariſhes, tithings or places. 2 *G.* 3. *c.* 20. *ſ.* 45.

Provided that no ſuch volunteer ſhall be admitted, who ſhall not be five feet four inches (at leaſt) in height, and able and fit for ſervice. 4 *G.* 3. *c.* 17. *ſ.* 3.

And if ſuch churchwardens or overſeers, ſhall give to ſuch volunteers any ſum or ſums of money to ſerve in the militia; they may make a rate on the inhabitants, by

by the rate they now uſe for the relief of the poor; which rate being approved by two juſtices, the ſaid churchwardens or overſeers may collect ſuch rate, and reimburſe themſelves ſuch ſums as they ſhall have paid with the conſent of the ſaid inhabitants as aforeſaid; and the overplus, if any, ſhall be applied as part of the poor rate. And if any ſhall refuſe to pay; one juſtice, on complaint thereof by ſuch churchwarden or overſeer, may levy the ſame by diſtreſs.—But no balloted perſon, who ſhall have ſerved himſelf, or by ſubſtitute, three years, or who ſhall be then ſerving himſelf or by ſubſtitute, ſhall be liable to pay ſuch rates. 2 *G.* 3. *c.* 20. *ſ.* 45.

Provided always, that any perſon who ſhall think himſelf aggrieved by ſuch rate as aforeſaid, may appeal to the next ſeſſions, in like manner as againſt the poor rate. *ſ.* 46.

Penalty of inſuring.

5. It ſhall not be lawful for any perſon (other than ſuch churchwardens and overſeers) to contract or agree with any perſon, for any ſum or other conſideration, to indemnify or inſure any perſon liable to ſerve in the militia, againſt ſerving therein; or in like manner to contract or agree to provide a ſubſtitute for any perſon who may be choſen by lot, or to pay the penalty of 10 l by this act laid on any perſon choſen by lot, who ſhall refuſe or neglect to appear and take the oath and ſerve, or provide a ſubſtitute; and if any perſon ſhall offend herein, he ſhall, for every ſuch contract or agreement forfeit 100 l, half to the proſecutor, and half to the poor; and every ſuch contract ſhall be void. 2 *G.* 3. *c.* 20. *ſ.* 51.

Provided, that nothing herein ſhall extend to prevent any perſon choſen by lot, from procuring by himſelf or others, a proper perſon to ſerve as his ſubſtitute. *ſ.* 52.

Provided alſo, that this ſhall not extend to prevent perſons of the ſame pariſh or place, or of two or more added together, from entering into ſubſcriptions amongſt themſelves, for paying jointly for ſubſtitutes to be provided for ſuch of the ſubſcribers on whom the lot may fall. *ſ.* 53.

Meeting appointed for ſwearing and inrolling.

6. And the ſaid deputy lieutenants and juſtices ſhall, at their ſaid ſubdiviſion meeting for balloting, appoint another meeting to be held within three weeks in the ſame ſubdiviſion, for ſwearing and inrolling the men. 2 *G.* 3. *c.* 20. *ſ.* 42.

And ſhall iſſue out an order (C) to the chief conſtables, to direct the conſtables or other officers of each pariſh or place, to give notice to every man ſo choſen to appear at

ſuch meeting; which notice ſhall be given, or left at his place of abode, at leaſt ſeven days before ſuch meeting. *id.*

VIII. Swearing and inrolling; and therein, of ſubſtitutes.

Proof to be made of notice to the balloted.

1. At which ſaid meeting for ſwearing and inrolling, the conſtables ſhall attend, and make a return upon oath of the days when ſuch notice was ſerved. 2 *G.* 3. *c.* 20. *ſ.* 42.

Swearing and inrolling.

2. And every perſon ſo choſen by lot ſhall, upon ſuch notice, appear at ſuch meeting, and there take the following oath, to be adminiſtered by one deputy lieutenant; and ſhall be inrolled to ſerve in the militia as a private militia man, for the ſpace of three years, in a roll to be then and there prepared for that purpoſe; or ſhall provide a fit perſon (to be approved by the ſaid deputy lieutenants and juſtices as aforeſaid then met) to ſerve as his ſubſtitute; which ſubſtitute ſo provided, ſhall take the ſaid oath, and ſign on the ſaid roll his conſent to ſerve as his ſubſtitute, during the ſaid term. 2 *G.* 3. *c.* 20. *ſ.* 42.

Which ſaid oath ſhall be as follows: "I *A. B.* do ſincerely promiſe and ſwear, that I will be faithful and bear true allegiance to his Majeſty king *George*, his heirs and ſucceſſors; and I do ſwear, that I am a proteſtant, and that I will faithfully ſerve in the militia within the kingdom of *Great Britain*, for the defence of the ſame, during the time for which I am inrolled, unleſs I ſhall be ſooner diſcharged." *id.*

But for the purpoſes of ſwearing and inrolling, it ſhall be lawful for any one deputy lieutenant, at any place in the ſubdiviſion he uſually acts in, to ſwear and inroll any ſubſtitute to ſerve for any place within his ſubdiviſion; provided he produce to ſuch deputy lieutenant a certificate under the hands and ſeals of two other deputy lieutenants, or of one juſtice with one deputy lieutenant, or of two juſtices acting in or reſiding near the ſame ſubdiviſion, certifying they have ſeen and do approve of ſuch ſubſtitute as a proper perſon to ſerve in the militia: Provided alſo, that the clerk belonging to ſuch ſubdiviſion ſhall and do attend with the roll, at ſuch ſwearing and inrolling. 2 *G.* 3. *c.* 20. *ſ.* 62.

(Provided always, that no ſuch ſubſtitute ſhall be admitted and ſworn, who ſhall not be five feet four inches in height, and able and fit for ſervice. 4 *G.* 3. *c.* 17. *ſ.* 3.)

And no officer ſhall, during the time the regiment, battalion, or independent company ſhall be out of the county or place to which they belong, engage any perſon to ſerve in ſuch regiment, battalion, or independent company, unleſs ſuch perſon ſo engaged ſhall be a native of ſuch county. 2 *G.* 3. *c.* 20. *ſ.* 56.

And no perſon ſhall be accepted and inrolled unleſs he takes and ſubſcribes the following oath: *I* A. B. *do ſolemnly ſwear, that to the beſt of my knowledge and belief, the place of my ſettlement is in the pariſh of* ——— *in the county of* ——— [being the county in which the ſubſtitute then offers to ſerve.] 22 *G.* 3. *c.* 62.

But by the 20 *G.* 3. *c.* 44. Whereas ſeveral perſons have been engaged to ſerve as militia men, ſubſtitutes, and volunteers, in ſeveral militia regiments, battalions, and independent companies, out of the counties to which they reſpectively belong, and not being natives of the ſame, and have been ſworn in and inrolled by deputy lieutenants acting out of their reſpective counties, or by the chief magiſtrate or juſtices of the peace not of ſuch counties to which ſuch corps of militia belong; it is enacted, that the engaging, ſwearing in, and inrolling of all ſuch militia men, previous to *May* 15, 1780, ſhall be valid and effectual, and all magiſtrates and officers indemnified for ſuch their proceedings therein.

Penalty of a ballotted man refuſing.

3. If any perſon ſo choſen by lot to ſerve in the militia (not being one of the people called quakers) ſhall refuſe or neglect to take the ſaid oath and ſerve in the militia, or to provide a ſubſtitute to be approved of as aforeſaid, who ſhall take the ſaid oath, and ſign his conſent to ſerve as his ſubſtitute; every perſon ſo refuſing or neglecting ſhall forfeit 10*l* (D), which forfeiture ſhall exempt him from ſerving in the militia, until by rotation it comes to his turn. 22 *G.* 3. *c.* 62. The ſaid forfeiture to be applied in the firſt place, by the deputy lieutenants and juſtices as aforeſaid within their reſpective ſubdiviſions, in providing a ſubſtitute for the perſon who ſhall have paid ſuch penalty; and if any part of ſuch penalty ſhall remain, after ſuch ſubſtitute ſhall be provided, the ſame ſhall be paid to the colonel or commanding officer, and be applied as part of the regimental ſtock. And where the goods of ſuch offender ſhall not be ſufficient to anſwer the diſtreſs, he ſhall be committed to the common gaol, for any time not exceeding three months. 2 *G.* 3. *c.* 20. *ſ.* 42, 93, 128.

But by the 19 *G.* 3. *c.* 72. Whereas this puniſhment, when the militia are embodied, is by no means adequate, it is therefore enacted, that whenever any perſon drawn by lot ſhall neglect to appear to be ſworn, or to find a ſubſtitute, or to pay the ſum of 10 l, or ſhall not have ſufficient effects whereon to levy the ſame by diſtreſs, and be afterwards apprehended, by warrant from any deputy lieutenant or juſtice, inſtead of being puniſhed by commitment to the houſe of correction [to the *common gaol*, it ſhould have ſaid], his name ſhall be entered on the rolls, and he ſhall be delivered over to ſome proper officer of the regiment or company, and be compelled to ſerve for the full term of three years from the time of his apprehenſion, and be liable to the ſame puniſhment for afterwards abſconding, deſerting, or otherwiſe, as if he had originally attended, and been duly ſworn and inrolled. *ſ.* 22.

Penalty of a ſubſtitute not appearing.

4. If any perſon ſhall receive any ſum of money for the purpoſe of ſerving as a ſubſtitute, and ſhall afterwards neglect to appear at the uſual meeting appointed for ſwearing the militia men, or before ſome one deputy lieutenant as aforeſaid; he ſhall, on conviction before one juſtice, or before any deputy lieutenants at their ſaid meeting, not only return the ſum ſo by him taken, but ſhall forfeit any ſum not exceeding 20 s, to be paid to the balloted man, or to the poor of the pariſh, at the diſcretion of the juſtices or deputy lieutenants: and if he ſhall not immediately pay the ſum ſo by him received, and the ſaid penalty, he ſhall be committed to the houſe of correction for fourteen days. 19 *G.* 3. *c.* 72. *ſ.* 11.

Militia officers beating up for volunteers.

5. If any ſerjeant, drummer, or fifer, ſerving in the militia, ſhall beat up for volunteers; the perſon who ſhall give orders for ſo doing, ſhall, on proof of ſuch beating up and ſuch orders given, upon oath before one juſtice, forfeit 20 l, half to the perſon who ſhall make information thereof, and the other half to be applied as part of the regimental ſtock; and if ſuch ſerjeant, drummer, or fifer, ſhall refuſe to declare upon oath before ſuch juſtice from whom he received ſuch orders; ſuch juſtice may commit him to the houſe of correction, for any time not exceeding three months. 2 *G.* 3. *c.* 20. *ſ.* 55.

Men having ſerved to be returned home in due time, when embodied.

6. All ſuch militia men, whoſe time of ſervice ſhall be near expiring, during the time that they ſhall be abſent from the county or place to which they belong, ſhall be returned by the commanding officer to the county or place for which they ſerved, ſo as that they may reach the ſaid

ſaid county by the expiration of their term. 2 *G.* 3. *c.* 20. *ſ.* 64.

7. By the 18 *G.* 3. *c.* 59. When the militia are embodied, and at a diſtance from the county, riding, or place, to which they belong, the commanding officer ſhall apply to every man whoſe time ſhall be within four months of expiring, and who in his judgment ſhall be fit to ſerve, and inquire if he be willing to continue his ſervice for a further term of three years, and for what price; and ſhall on the firſt day of *January*, *March*, *May*, *July*, *September*, and *November*, reſpectively, or as ſoon after as conveniently may be, tranſmit to the clerk of the general meetings a liſt of all ſuch as he ſhall find willing to ſerve again, and for what price; which liſt ſhall be ſigned by ſuch militia men ſo conſenting, and be made in the following form: Unleſs they ſhall conſent to ſerve again.

Name

Name of the county.	Names of the men actually serving.	If substitutes, for whom they serve.	Of the parish of	In the hundred of	Time of his service expires on	Engages to serve 3 years longer, if required, for the sum of	Signature of consent.
	A. B.	G. H.	L.	O.			A. B.
	C. D.	I. K.	M.	P.			C. D.
	E. F.		N.	Q.			E. F.

And ſuch ſignature ſhall be binding on the perſon ſo ſigning as aforeſaid. And the clerk of the general meetings ſhall tranſmit to each clerk of the ſubdiviſion meetings, duplicates of ſuch parts of the ſaid liſts as contain the names of perſons ſerving for the places within ſuch ſubdiviſions. And the clerk of each ſubdiviſion meeting ſhall forthwith give ſeven days notice for a ſubdiviſion meeting to be held; at which, the whole number, whoſe times ſhall expire within four months of the date of the ſaid liſts, ſhall be choſen by lot, or otherwiſe ſupplied according to the ſtatutes in that behalf. And the deputy lieutenants or juſtices preſent at the ſubdiviſion meeting when the men ſo choſen ſhall attend to be ſworn and inrolled, ſhall acquaint each man ſo choſen for any pariſh or place in the ſaid ſubdiviſion, if there be any of thoſe who are at that time ſerving for the ſame, who are willing to continue as ſubſtitutes, and at what price. And ſuch of the perſons ſo choſen as ſhall be willing to give the ſaid price, ſhall forthwith pay into the hands of the deputy-lieutenants or juſtices ſuch ſum as aforeſaid, which ſhall be by them remitted to the commanding officer, and by him paid to ſuch perſons as ſhall have engaged to ſerve as aforeſaid: who on the receipt thereof ſhall be ſworn by a juſtice where the regiment, battalion, or independent company ſhall be; who ſhall certify the ſame under his hand and ſeal, to the commanding officer; which certificate ſhall be valid, as if the perſon ſo ſworn had been inrolled; and ſhall be in this form:

To wit. { A. B. *of the pariſh of* C, *in the county of* D, *hired as a ſubſtitute to ſerve in the militia for* F F *of the pariſh of* G *in the county of* H, *came this day before me* I. K. *one of his majeſty's juſtices of the peace for the county of* L, *and took and ſubſcribed the following oath*; videlicet,

I, A. B. *do ſincerely promiſe and ſwear, that I will be faithful and bear true allegiance to his majeſty king* George, *his heirs and ſucceſſors; and I do ſwear that I am a proteſtant, and that I will faithfully ſerve in the militia within the kingdom of* Great Britain *for the defence of the ſame, during the time which I am ſo certified for, unleſs I am ſooner diſcharged:*

So help me God.

And

And by the 19 G. 3. c. 72. the ſame powers, directions, and proviſions given by the aforeſaid act, with reſpect to the balloting for proper men to ſerve in lieu of others, four months previous to the expiration of their time, when embodied and at a diſtance from home, ſhall be continued and given to proceed to ballot for ſuch other men, and to execute the powers neceſſary thereto, at any time within four months previous to the expiration of their time, when the regiment, battalion, or company ſhall be within the county, riding, or place to which it belongs, or in any other county, riding, or place: and further, the commanding officer ſhall have power to diſcharge ſuch number of men, whoſe times of ſervice are within the time of expiration aforeſaid, and to receive ſuch other men, in lieu thereof, as ſhall be ſo balloted, or inrolled and ſworn in as balloted men or ſubſtitutes, at any time within the term ſo allowed, whether the regiment ſhall be within the county, or abſent from home in any other part of the kingdom; and the time of the ſervice of ſuch men ſo received, ſworn in, and inrolled, ſhall commence at any time within the term allowed as aforeſaid, or at the end thereof. *ſ.* 21.

Militia man changing his place of abode.

8. By the 2 G. 3. c. 20. Every militia man ſhall, if he change the place of his abode from one pariſh or place, to another pariſh or place, the militia whereof ſhall ſerve in the ſame regiment or battalion, continue to ſerve in ſuch regiment or battalion for the place from whence he removed, and ſhall not occaſion a vacancy for ſuch pariſh or place, but ſhall be trained, exerciſed, and paid by the officer of the company to which the militia of ſuch pariſh to which he removed ſhall belong; and every militia man, who ſhall change the place of his abode from one county to another county, or from one pariſh or place to another pariſh or place, the militia whereof ſhall ſerve in different regiments or battalions; ſuch perſon ſhall ſerve, upon the firſt vacancy, in ſuch regiment or battalion until his ſervice be compleated. And he ſhall before he change the place of his abode, give notice thereof to three deputy lieutenants, or two deputy lieutenants together with one juſtice, or one deputy lieutenant together with two juſtices, at ſome ſubdiviſion meeting, or to one deputy lieutenant; who ſhall give to him a certificate of the time he ſhall have ſerved from his inrollment; and if ſuch certificate ſhall have been given by one deputy lieutenant only, he ſhall certify the ſame to the next meeting within the ſubdiviſion; and ſuch militia man ſhall produce the ſaid certificate to the deputy lieutenants

tenants and juſtices, at the next meeting for the ſubdiviſion wherein he ſhall then dwell, or to one deputy lieutenant reſiding near, who ſhall certify the ſame to the next ſubdiviſion meeting. And if any militia man, ſo changing his place of abode, ſhall not give notice, and produce his certificate as aforeſaid; he ſhall, on conviction upon oath before one juſtice, forfeit 20 s; and if he ſhall not immediately pay the ſame, it ſhall be levied by diſtreſs; and for want of ſufficient diſtreſs, he ſhall be committed to the houſe of correction for any time not exceeding one month. And the clerk to the ſubdiviſion meeting ſhall, upon notice given by any militia man of changing the place of his abode, and of a certificate granted him as aforeſaid, forthwith give notice thereof to the clerk of the meeting for the ſubdiviſion to which the pariſh or place where he then reſides ſhall belong. *ſ.* 67, 68.

But by the 18 *G.* 3. *c.* 59. Every perſon choſen by lot to ſerve in the militia ſhall be compellable to ſerve, notwithſtanding he may have changed his place of abode. *ſ.* 22.

9. If any perſon inrolled and ſerving in the militia ſhall offer himſelf to ſerve and be inrolled as a ſubſtitute in any other regiment or battalion of militia; he ſhall, on proof upon oath before one juſtice, forfeit 10 l, to the informer, to be levied by diſtreſs; and for want of ſufficient diſtreſs, the juſtice ſhall commit him to the common gaol for any time not exceeding three months. 9 *G.* 3. *c.* 42. *ſ.* 48. Offering to ſerve in the militia elſewhere.

And whereas doubts have been conceived whether any militia man who hath been inrolled in a different hundred, rape, wapentake, diviſion, or place, of the ſame county from that in which he is bound to ſerve for himſelf, or as a ſubſtitute, could be compelled to ſeve as ſuch within the proviſions of the acts now in force for raiſing the militia; it is declared and enacted, that ſuch inrollment is legal and valid, and that every man who hath taken the oath and ſubſcribed the county roll in the preſence of one deputy lieutenant and of the clerk of the general meetings (or his deputy), ſhall be deemed a militia man in like manner as if three deputy lieutenants had been preſent at the inrollment. 11 *G.* 3. *c.* 32. *ſ.* 25.

10. By the 5 *G.* 3. *c.* 36. If any perſon, ſworn and inrolled in the militia, ſhall inliſt in his majeſty's other forces; the overſeer of the poor of the place for which he ſerves, ſhall, as ſoon as it comes to his knowledge, acquaint the adjutant therewith; who ſhall forthwith apply Inliſting into the regulars.

ply to a juſtice of the peace for the place for which ſuch perſon is inrolled, to iſſue his warrant to apprehend ſuch militia man; and ſuch adjutant may ſend the ſerjeant and drummers to ſearch for and apprehend him by virtue of ſuch warrant: And any juſtice for any county or place where ſuch militia man ſhall or may be found, ſhall indorſe the ſaid warrant (on application made to him for that purpoſe) and cauſe the ſaid militia man to be apprehended and brought before him, or ſome other juſtice for the county or place where ſuch militia man ſhall be apprehended: And if it ſhall appear upon oath to ſuch juſtice, that the ſaid perſon was inrolled to ſerve in the militia, at the time of his inliſting into his majeſty's other forces, and did not acquaint the officer inliſting him therewith; ſuch juſtice ſhall commit him to the houſe of correction of the place where he ſhall be ſo apprehended, there to be kept to hard labour not exceeding three months. *ſ.* 6.

And by the 7 *G.* 3. *c.* 17. If any officer, ſerjeant, or other perſon recruiting for men to inliſt and ſerve in his majeſty's other forces, ſhall wilfully and knowingly inliſt any perſon, who at the time of ſuch inliſting ſhall be inrolled and engaged to ſerve in the militia; every ſuch inliſting ſhall be deemed null and void. And if any militia man ſhall deny to ſuch recruiting officer or other perſon, that he is at the time of his offering to inliſt a militia man then actually inrolled and engaged to ſerve (which the ſaid officer or other perſon is hereby required to aſk any man offering to inliſt), and ſhall inliſt in his majeſty's other forces; he ſhall, on conviction on the oath of one witneſs before one juſtice for the place where ſuch perſon was inrolled to ſerve in the militia, be committed to the common gaol of ſuch place for any time not exceeding ſix months, over and above any penalty or puniſhment to which he ſhall be otherwiſe liable by law; and from the day on which his engagement to ſerve in the militia ſhall end, and not ſooner, ſhall belong to the corps of his majeſty's other forces into which he ſhall have been ſo inliſted. *ſ.* 18.

Soldier in the regulars offering to ſerve in the militia.

11. If any perſon ſerving in the regular forces ſhall offer himſelf to ſerve and be inrolled as a ſubſtitute in the militia; he ſhall, on proof upon oath before one juſtice, forfeit 10 l. to the informer, to be levied by diſtreſs; for want of ſufficient diſtreſs, the juſtice ſhall commit him to the common gaol for any time not exceeding three months. 9 *G.* 3. *c.* 42. *ſ.* 48.

12. If

12. If any ſervant, hired by the year or otherwiſe, ſhall ſerve in the militia; it ſhall be lawful for one juſtice, on complaint upon oath by ſuch ſervant, to order ſo much of his wages as ſhall appear to ſuch juſtice to be due, to be immediately paid him by his maſter or employer, in proportion to the ſervice he has performed; and ſhall proceed therein as is directed by the ſtatute of 20 *G.* 2. *c.* 29. 2 *G.* 3. *c.* 20. *ſ.* 50. Servant ſerving in the militia to be paid his wages.

13. Provided always, that no militia man, having ſerved as a ſubſtitute, ſhall by ſuch ſervice be excuſed from ſerving for himſelf, when he ſhall be choſen by lot. 2 *G.* 3. *c.* 20. *ſ.* 69. Subſtitute not diſcharged from ſerving again.

14. But no perſon, having ſerved perſonally or by ſubſtitute three years in the militia, ſhall be obliged to ſerve again, until by rotation it comes to his turn. 2 *G.* 3. *c.* 20. *ſ.* 78. Principal diſcharged.

And when any ſubſtitute ſhall, after having been approved as aforeſaid, before the expiration of the term for which he was to ſerve, die, or be appointed a ſerjeant, or be legally diſcharged; the perſon for whom he ſerved ſhall not be obliged to ſerve himſelf, or to find another; but ſuch vacancy ſhall be filled up, as in caſe of vacancies occaſioned by the death or diſcharge of perſons ſerving for themſeves. *ſ.* 61.

15. Note, After every ſubdiviſion meeting, the clerk of the ſaid meeting ſhall, within fourteen days after each meeting, tranſmit to his majeſty's lieutenant fair and true copies of the rolls ſigned at the ſaid meetings. 2 *G.* 3. *c.* 20. *ſ.* 70. Copies of the rolls to be tranſmitted to the lieutenant.

IX. Forming the militia into regiments and companies.

1. Within one month after the rolls are ſo returned from the deputy lieutenants and juſtices as aforeſaid (to the ſecond general meeting), there ſhall be a third general meeting; at which they ſhall form and order the militia into regiments; conſiſting, where the number of militia men will admit the ſame, of twelve, but in no caſe of leſs than eight companies, of 80 men at the moſt, and 60 men at the leaſt, of perſons living as near to each other as conveniently can be; and ſhall poſt to each company proper officers commiſſioned and qualified as aforeſaid; that is to ſay, the field officers of a regiment ſhall be one colonel, one lieutenant colonel, and one major; and where the number of private men ſhall amount to five companies, or to any number under eight companies, ſuch militia ſhall be formed into a battalion, with one lieutenant colonel, and one major, and Into regiments.

and no other field officer; and where the number of private men ſhall amount to three companies, or to any number under five companies, ſuch militia ſhall be formed into a battalion with one lieutenant colonel or major, and no other field officer: And in each regiment or battalion of militia a number of captains, lieutenants, and enſigns, equal to the number of companies in ſuch regiment or battalion (grenadier companies excepted, wherein there ſhall be one captain and two lieutenants). 2 *G.* 3. *c.* 20. *ſ.* 95, 96.

But by the 18 *G.* 3. *c.* 59. Where a battalion is commanded by a lieutenant colonel, who ſhall have been commandant of the ſame for five years or longer, the lord lieutenant, with the conſent of his majeſty, may give to ſuch lieutenant colonel commandant a commiſſion of colonel. *ſ.* 6.

And in all counties where the number of men are ſufficient to form four companies, but not ſufficient to form a regiment, his majeſty's lieutenant may appoint two perſons legally qualified to ſerve without pay as field officers in ſuch battalion, with the ſame rank as if the number were ſufficient to form a regiment. *ſ.* 21.

Independent companies.

2. Where the number ſhall not be ſufficient to form a regiment or battalion; they ſhall be formed into independent companies, each company to conſiſt of 80 private men at the moſt, and 60 private men at the leaſt, with one captain, one lieutenant, and one enſign, to each company: And his majeſty may join together any number of ſuch independent companies, and therewith form a battalion, or incorporate them with any regiment or battalion, but ſo as the number of companies in ſuch regiment or battalion do not exceed, or fall ſhort of, the number of companies of which a regiment or battalion is herein before allowed to conſiſt. 2 *G.* 3. *c.* 20. *ſ.* 97.

And by the 18 *G.* 3. *c.* 59. In all counties where the number of men is ſufficient to form two companies only, the eldeſt captain ſhall rank as major, but ſhall only be intitled to the pay of captain: and no clerk ſhall be allowed where the number of men is ſufficient to form only one or two companies, but the receiver general ſhall pay the money neceſſary for ſuch number of men to the commanding officer of ſuch company or companies, who ſhall account with him for the ſame. *ſ.* 3.

X. *Training and exerciſe.*

1. The militia ſhall be trained and exerciſed in manner following; that is to ſay, by regiment or battalion twice in a year, 14 days at each time, or once in a year, for 28 days together, as ſhall be directed by his majeſty's lieutenant and two deputy lieutenants, and on the death or removal or in the abſence of his majeſty's lieutenant, by three deputy lieutenants, at ſuch time and place, as ſhall be leaſt inconvenient to the public, to be by them appointed at a general meeting: And during ſuch time, all the proviſions in any act for puniſhing mutiny and deſertion and for the better payment of the army and their quarters, ſhall extend to and take place in reſpect of the officers and private men of every regiment or battalion; but not to extend to life or limb. 2 *G.* 3. *c.* 20. *ſ.* 99. At what times.

2. And notice of the time and place ſhall be ſent by the clerk of the general meeting to the chief conſtables, with directions to forward the ſame to the conſtables or other officers of the ſeveral pariſhes or places; who ſhall cauſe ſuch notice to be fixed on the doors of their churches or chapels reſpectively; or if any place being extra-parochial, ſhall have no church or chapel belonging to it, on the door of the church or chapel of ſome pariſh or place thereto adjoining. 2 *G.* 3. *c.* 20. *ſ.* 103. Notice of the time and places.

3. And all ſuch militia men ſhall duly attend, at the times and places of exerciſe ſo to be appointed. 2 *G.* 3. *c.* 20. *ſ.* 103. Due attendance there.

4. And if any militia man (not labouring under any infirmity incapacitating him) ſhall not appear; he may be apprehended, without any previous ſummons, by warrant from one juſtice of the ſame county or place, or of any other county or place within which ſuch offender ſhall be found, on oath made before ſuch juſtice, that ſuch militia man did not appear at the time and place aforeſaid, and on producing alſo to the juſtice a certificate ſigned by the clerk of the ſubdiviſion meeting, that it appears to him by the roll in his cuſtody, that the ſaid defaulter is, or at the time of the offence committed was a militia man for the county wherein he ought to have appeared as aforeſaid, mentioning in ſuch certificate the date of his inrollment; and upon proof on oath made before the ſaid juſtice of the handwriting of the ſaid clerk: And if any militia man ſo apprehended as aforeſaid, ſhall not prove to the ſatisfaction of the ſaid juſtice, that he did at the time appointed for ſuch appearance labour under Penalty of not appearing, or deſerting.

der ſome infirmity incapacitating him; or that he had then changed his place of abode and removed upon notice and certificate as is above directed, into the ſubdiviſion wherein he ſhall be dwelling at the time of his being ſo apprehended; or that he, at the time of ſuch default of appearance, was inrolled alſo to ſerve in the militia of ſome other county or place, and hath thereby forfeited and paid the penalty of 10l, inflicted for that offence by the 4 *G.* 3. *c.* 17; he the ſaid defaulter (not making ſatisfactory proof as aforeſaid of one or other of the ſaid three cauſes of excuſe) ſhall ſtand immediately convicted by the ſaid juſtice before whom he ſhall be brought (whether the ſaid juſtice be of the ſame or of ſome other county or place); and the ſaid juſtice ſhall then require and demand of him the immediate payment of the penalty of 20l; and on refuſal or neglect to pay the ſame into the hands of the ſaid juſtice, or of ſuch perſon as he ſhall then direct, for the uſe of the regiment or battalion wherein ſuch defaulter was inrolled, to ſerve as part of the common ſtock of ſuch regiment or battalion, the ſaid juſtice ſhall commit him to the common gaol of the county or place where he ſhall be ſo convicted, there to remain without bail or mainprize for ſix months, or until he ſhall have paid the ſaid penalty of 20 l. 2 *G.* 3. *c.* 20. *ſ.* 103. 5 *G.* 3. *c.* 34. *ſ.* 15.

And if any militia man, having joined the corps, ſhall deſert during the time of annual exerciſe, and not be apprehended during the time of ſuch exerciſe; he ſhall incur the penalty and be ſubject to the puniſhment above inflicted on militia men not joining their corps. 4 *G.* 3. *c.* 17. *ſ.* 6.

And one juſtice, in any county or place where ſuch deſerter ſhall be found, may proceed againſt him in the ſame manner, and execute the like powers, as in the caſe of not appearing at the annual exerciſe. 5 *G.* 3. *c.* 34. *ſ.* 16.

And whereas doubts have ariſen whether any principal or ſubſtitute who ſhall neglect to join the corps, or who after having joined it ſhall deſert or abſent himſelf before the expiration of the term for which he was ſworn and inrolled, can be taken up and puniſhed after the expiration of the ſaid term; it is enacted, that every principal, ſubſtitute, and volunteer, ſhall faithfully perform his three years ſervice: And if he ſhall abſcond, or deſert, or abſent himſelf from his duty, before the expiration of the time for which he was inrolled, whenever he is taken, he ſhall be ſubject to be puniſhed for ſuch default or deſertion, and ſhall be obliged to complete the remainder of

his three years ſervice which was unexpired at the time of ſuch his default or deſertion. 18 *G.* 3. *c.* 59. *ſ.* 12.

And whereas ſeveral perſons have made a practice of taking money to ſerve, and have deſerted, and the pecuniary penalty on ſuch perſons in general cannot be levied for want of ſubſtance, and the alternative of ſix months impriſonment tends not only to corrupt their morals, but is a loſs to the public as well as to their families, and alſo a great expence to ſuch pariſh as is obliged to ſupport ſuch families; it is therefore enacted, that every ſubſtitute who ſhall deſert, whenever he ſhall be taken, over and above ſuch military puniſhment as ſhall be inflicted on him, ſhall ſerve for three years to be computed from the day on which he was apprehended: and the commanding officer ſhall order notice to be given to the clerk of the ſubdiviſion in which he is engaged to ſerve, of his deſertion, and the time of his apprehenſion, that he may make a freſh entry of his name in the roll to ſerve for three years from that time. *ſ.* 13.

Provided, that no officer or private man ſhall be liable to any penalty or puniſhment, on account of his abſence during the time he ſhall be going to vote at any election of a member to ſerve in parliament, or returning from ſuch election. 2 *G.* 3. *c.* 20. *ſ.* 111.

Carriages. 5. And when the militia ſhall be called out to be trained and exerciſed, it ſhall be lawful for a juſtice of the peace, being duly thereunto required by an order from his majeſty, or from his majeſty's lieutenant, or a deputy lieutenant, or from the colonel or other chief commiſſion officer upon the place, of any regiment, company or detachment of militia, to iſſue out his warrant under his hand, to the chief conſtables, petty conſtables or other officers of the hundreds, pariſhes, tithings or places, from, thro', near or to which, any ſuch regiment or company of militia men, or any detachment thereof, ſhall be ordered to march, requiring them to make ſuch proviſion for carriages of the arms, clothes, accoutrements, powder, match, bullets, or other warlike materials, with able men to drive ſuch carriages, as is and are mentioned in the ſaid order; but in caſe ſuch ſufficient carriages and men cannot be provided within any ſuch county, riding, hundred, rape, lath, wapentake, diviſion, pariſh, tithing, or place; then the next juſtice ſhall, upon ſuch order as aforeſaid being ſhewn unto him, iſſue his warrant to the chief conſtables, petty conſtables, or other ſuch officers of the next county, riding, hundred, rape, lath, wapentake, diviſion, pariſh, tithing, or place, for the purpoſes

aforeſaid, to make up ſuch deficiency of carriages. 2 G. 3. c. 20. ſ. 123.

And ſuch lieutenant, deputy lieutenant, colonel or other chief commiſſion officer upon the place, who by virtue of the ſaid warrant from the ſaid juſtice ſhall demand ſuch carriage of ſuch officer as aforeſaid, ſhall at the ſame time pay down to him in hand for the uſe of the perſon who ſhall provide ſuch carriages and men, the ſum of 1s for every mile any waggon with five horſes ſhall travel; and 1s for every mile any wain with ſix oxen, or with four oxen and two horſes, ſhall travel; and 9d for every mile any cart with four horſes ſhall travel; and ſo in proportion for carriages drawn by a leſs number of horſes or oxen: for which the officer ſhall give a receipt. *id.*

And ſuch chief conſtable, petty conſtable, or other officer, ſhall order and appoint ſuch perſon or perſons having carriages within their reſpective diviſions, as they ſhall think proper, to provide and furniſh ſuch carriages and men according to ſuch warrant; which perſon ſo ordered ſhall provide and furniſh the ſame accordingly, for one day's journey and no more. *id.*

And in caſe the ſaid chief conſtables, petty conſtables, or other officers, ſhall be at any charges for ſuch carriages, over and above what is ſo received by them of the ſaid lieutenant, deputy lieutenant, colonel, or other chief officer as aforeſaid; ſuch overplus ſhall be borne by each county, riding or place, where ſuch additional expence ſhall be incurred, and be repaid to them without fee by the treaſurer out of the public ſtock. *id.*

And if any ſuch chief conſtable, conſtable, or other officer, ſhall wilfully neglect or refuſe to execute ſuch warrant; or if any perſon appointed by ſuch chief conſtable, conſtable, or other officer, to provide or furniſh any ſuch carriage and man, ſhall wilfully neglect or refuſe to provide the ſame; he ſhall forfeit a ſum not exceeding 40s, nor leſs than 20s, to the uſe of the poor of the pariſh or place where ſuch offence ſhall be committed: the ſame to be heard and determined by two juſtices; and the penalty to be levied by their warrant by diſtreſs. *ſ.* 124.

Billeting.

6. It ſhall be lawful for the mayors, bailiffs, conſtables and other chief magiſtrates and officers of cities, towns, pariſhes, tithings, villages, and other places, and in their default or abſence for a juſtice of the peace inhabiting in or near ſuch place, and for no others; and they are hereby required, to quarter and billet the officers

and private men, at the times when they ſhall be called out to annual exerciſe, in inns, livery ſtables, alehouſes, victualling houſes, and all houſes of perſons ſelling brandy, ſtrong waters, cyder, wine, or metheglin, by retail; on application to them made by the lieutenant, or by the colonel or commanding officer. 2 *G.* 3. *c.* 20. *ſ.* 100.

In like manner, the ſerjeants, drummers, and fifers, ſhall be billeted; and the occupiers of the houſes where they ſhall be billeted, ſhall provide for them, at ſuch times for which no proviſion has by law been made for that purpoſe, convenient lodgings only. *ſ.* 101.

Stoppages of pay during the time of exerciſe.

7. And whereas it would be conducive to the preſervation of order and diſcipline during the time of annual exerciſe, of great convenience to the corporals and private men in ſupplying them with neceſſaries, and of eſſential utility to their families, if the captains or commanding officers were enabled to ſtop a limited part of the daily pay of ſuch corporals and private men; it is enacted, that it ſhall be lawful for every captain or commanding officer of the militia, to put the corporals and private men of his company under ſtoppages, not exceeding 6 d a day, for the purpoſes aforeſaid: Provided, that ſuch captain or commanding officer ſhall account with the ſaid corporals and private men for the ſaid ſtoppages, before they ſhall be diſmiſſed from the ſaid annual exerciſe; having firſt deducted what ſhall have been laid out for them for neceſſaries and repair of arms damaged by their neglect. 4 *G.* 3. *c.* 17. *ſ.* 7.

Arms and clothes to be depoſited.

8. All muſkets delivered for the ſervice of the militia ſhall be marked with the letter M, and the name of the county or place to which they belong. 2 *G.* 3. *c.* 20. *ſ.* 108.

And the captain of each company ſhall keep in his own cuſtody, or leave and depoſit with the ſeveral ſerjeants belonging to his company, or with ſuch perſons as the ſaid captain ſhall appoint, the arms, clothes, and accoutrements provided for his company; and the churchwardens of every pariſh or place where the ſaid arms, clothes and accoutrements are ſo depoſited, or one of them, ſhall provide at the expence of ſuch pariſh or place, a cheſt, in which ſuch captain, ſerjeant or other perſon ſo appointed as aforeſaid ſhall keep the ſaid arms in ſome dry part of his houſe or dwelling, under lock and key; and another cheſt in which he ſhall keep under lock and key the ſaid clothes and accoutrements: and the ſerjeant or other perſon appointed to train and diſcipline the men, ſhall take care that after exerciſe every militia man ſhall

clean and return his arms, clothes and accoutrements, to his captain, or to ſuch perſon as ſhall be appointed as aforeſaid to receive the ſame. *ſ.* 104.

And if the ſerjeant, or other perſon appointed by any captain of the militia to receive and keep in his cuſtody the ſaid arms, clothes and accoutrements, ſhall not complain within three days to a neighbouring juſtice, of any militia man's not having returned his arms, clothes and accoutrements as before directed; he ſhall, on conviction before one juſtice, forfeit 20s, which if he ſhall not immediately pay, the ſame ſhall be levied by diſtreſs by warrant of ſuch juſtice. *ſ.* 112.

Provided, that his majeſty's lieutenant, or in his abſence three deputy lieutenants may by their warrant employ ſuch perſons as they ſhall think fit, to ſeize and remove the arms, clothes and accoutrements, belonging to the militia, whenever ſuch lieutenant or deputy lieutenants ſhall judge it neceſſary to the peace of the kingdom; and to deliver the ſame into the cuſtody of ſuch perſons, as the ſaid lieutenant or deputy lieutenants ſhall appoint to receive the ſame, for the purpoſes of this act. *ſ.* 105.

And if any ſerjeant, or any other perſon intruſted by the captain, with the cuſtody of any arms, clothes or accoutrements belonging to the militia, ſhall deliver any of them out, unleſs for exerciſing the men, or by the command of his ſuperior officer; it ſhall be lawful for two juſtices, to commit him to the common gaol, for any time not exceeding ſix months. *ſ.* 106.

Pawning or loſing the ſame.

9. And if any militia man ſhall ſell, pawn, or loſe any of his arms, clothes or accoutrements; he ſhall, on conviction before one juſtice, forfeit a ſum not exceeding 3l, and if he ſhall not immediately pay the ſame, ſuch juſtice ſhall commit him to the houſe of correction for one month, and until ſatisfaction ſhall be made for the ſame; and if he ſhall not be of ability to make ſuch ſatisfaction, then for the ſpace of three months. 2 *G.* 3. *c.* 20. *ſ.* 109.

And if any militia man ſhall refuſe or neglect to return his arms, clothes and accoutrements in good order, to his captain, or to ſuch perſon as ſhall be appointed as aforeſaid to receive the ſame, whenever demanded; he ſhall, on conviction before one juſtice forfeit 10s, and if he ſhall not immediately pay the ſame, ſuch juſtice ſhall commit him to the houſe of correction for any time not exceeding fourteen days. *ſ.* 109.

And if any perſon ſhall knowingly and willingly buy, take in exchange, conceal or otherwiſe receive, contrary

to

to the true intent and meaning of this act, any arms, clothes or accoutrements belonging to the militia, upon any account or pretence whatſoever; he ſhall, on conviction before one juſtice, forfeit 5l, and if he ſhall not immediately pay the ſame, the ſaid juſtice ſhall levy the ſame by diſtreſs; and for want of diſtreſs, ſhall commit him to the common gaol for three months, or ſhall cauſe him to be publickly whipt, at the diſcretion of ſuch juſtice. *ſ.* 110.

Penalty on non-commiſſion officers not doing their duty.

10. And the ſerjeants ſhall receive all their military orders with reſpect to training the militia men under their care, from the adjutants, and their ſuperior officers; and ſhall report from time to time all crimes and miſdemeanors of the ſeveral militia men under their command, to their adjutant or ſuperior officers, or to any two deputy lieutenants, or to ſome civil magiſtrate, as the caſe ſhall require. 2 *G.* 3. *c.* 20. *ſ.* 113.

And if any non-commiſſion officer ſhall be negligent in his duty, or inſolent, or diſobedient to the orders of the adjutant, or other his ſuperior officer, and be thereof convicted as aforeſaid upon the oath of the adjutant or other ſuperior officer before one juſtice; he ſhall forfeit any ſum not exceeding 30s, at the diſcretion of ſuch juſtice; and if he ſhall not immediately pay the ſame, the ſaid juſtice ſhall commit him to the houſe of correction for fourteen days; and his majeſty's lieutenant may diſcharge ſuch non-commiſſion officer if he ſhall think fit. *ſ.* 114.

Return to be made to the lieutenant.

11. And the colonel or commanding officer of every regiment or battalion of unembodied militia ſhall, as often as they ſhall be called out to exerciſe, return to his majeſty's lieutenant a true ſtate of ſuch regiment or battalion. 2 *G.* 3. *c.* 20. *ſ.* 102.

Return to a ſecretary of ſtate.

12. And alſo ſhall, within thirty days after the exerciſe ſhall be finiſhed, tranſmit to one of the ſecretaries of ſtate, a return ſigned by him, of the ſeveral officers, non-commiſſion officers, and private men, who were inrolled and did ſerve at the time of exerciſe aforeſaid, in manner and form following:

Return of a regiment of militia at annual exercise.

Commissioned officers		Colonel
		Lieutenant colonel
		Major
		Captains
		Captain lieutenant
		Lieutenants
		Ensigns.
	Staff officers	Adjutant
Non-commissioned officers.		Serjeants
		Corporals
		Drummers
Private		Private

Present
Absent
Wanting to compleat

6 G. 3. c. 30. s. 15.

And in the ſaid return he ſhall ſpecify the number of days on which each of the commiſſioned officers was preſent during the time of annual exerciſe; and the ſecretaries of ſtate ſhall cauſe copies thereof to be annually laid before both houſes of parliament: which part of the return ſhall be in this form,

	N° of days.
Colonel	
Lieutenant colonel	
Major	
Firſt captain	
Second captain	

And ſo of the reſt. 9 *G.* 3. *c.* 42. *ſ.* 51, 52.

13. He ſhall alſo, within 30 days after the exerciſe ſhall be finiſhed, tranſmit to the auditor of the exchequer a return ſigned by him, of the ſeveral officers, non-commiſſion officers and private men, who were inrolled and did ſerve at the time they were ſo exerciſed, in like manner as to a ſecretary of ſtate. 10 *G.* 3. *c.* 9. *ſ.* 8. Return to the auditor of the exchequer.

14. Finally, his majeſty's lieutenant or three deputy lieutenants ſhall, on or before *Dec.* 25, certify to the clerk of the peace, that the militia for ſuch county or place has been raiſed, and when and at what time the ſame was firſt raiſed; the names, number, and rank of officers, and the number of private men, in the year when ſuch certificate is made, and the time of exerciſe in that year. Which certificate the clerk of the peace ſhall deliver to the juſtices at their ſeſſions, to be held next after the ſaid 25th of *December*, on the day on which ſuch ſeſſions ſhall be opened; and ſhall file the ſame amongſt the records, that the true ſtate of the militia in that county may appear. 6 *G.* 3. *c.* 30. *ſ.* 20. 9 *G.* 3. *c.* 42. *ſ.* 18. Return to the ſeſſions.

And he ſhall, within 14 days after the ſaid ſeſſion, tranſmit to the commiſſioners of the treaſury, and alſo to the receiver general, a copy ſigned by ſuch clerk of the peace of every ſuch certificate ſo delivered to him. *ſ.* 23.

And if he ſhall neglect or refuſe to receive, deliver, file, record, or tranſmit any ſuch certificate; he ſhall forfeit 500l, to him who ſhall ſue; and ſhall forfeit his office, and be incapacitated. *ſ.* 24.

XI. Cloath-

XI. Cloathing and pay.

The pay of the *embodied* militia will be ſpecified when we come to treat of their being drawn out into actual ſervice.

The pay of the *unembodied* militia is directed by annual acts. That which is here ſpecified is the 21 *G.* 3. *c.* 21. By which it is enacted, that in every place where the militia is or ſhall be raiſed, the receiver general of the land tax for ſuch place ſhall iſſue and pay as followeth:—For the pay of the ſaid militia for 4 calendar months in advance, at the rate of 6s a day for each *adjutant*; 1s for each *ſerjeant*, with the addition of 2s 6d a week for each *ſerjeant major*; 6d a day for each *drummer*, with the addition of 6d a day for each *drum major*; and at the rate of 6d a month for each private man and drummer for defraying *contingent expences*, one penny whereof to be applied to the hoſpital expences when they are out upon their annual exerciſe; and for half a year's ſalary for the *clerk of the regiment or battalion* at the rate of 50l a year; and to the *clerk of the general meetings* at the rate of 5l 5s for each meeting; and to the ſeveral *clerks of the ſubdiviſion meetings* at the rate of 1l 1s for each meeting; and alſo for *cloathing*, after the rate of 3l 10s for each ſerjeant, and 2l for each drummer, with the addition of 1l for each ſerjeant major and drum major; and with reſpect to the private militia men, where they have not been cloathed within three years, at the rate of 1l 10s for each private man.—Provided nevertheleſs, that in any place where pay has not yet been iſſued, no pay ſhall be iſſued, until his majeſty's lieutenant, or in his abſence three deputy lieutenants, ſhall have certified to the commiſſioners of the treaſury, and to the receiver general of the land tax, that three fifths of the number of private men have been inrolled, and that three fifths of the proportion of their commiſſion officers have accepted their commiſſions and entered their qualifications.

All which ſums of money aforeſaid (except what ſhall be due to the clerks of the meetings, and except what ſhall be due for cloathing) ſhall, where the militia has never been embodied, be paid by the receiver general into the hands of the clerk of the regiment or battalion, on his producing his warrant of appointment to ſuch office under the hand and ſeal of his majeſty's lieutenant; and where

where the militia has been embodied, into the hands of the clerk of the regiment or battalion, on his producing his warrant of appointment to ſuch office under the hand and ſeal of the colonel, or, where there is no colonel, of the commanding officer, notwithſtanding ſuch militia ſhall have been diſembodied; and where the militia ſhall be formed into independent companies, ſuch ſums ſhall be paid by the receiver general into the hands of the reſpective captain of ſuch independent company, or to ſuch perſon as ſuch captain ſhall authorize to receive the ſame.

And the ſaid receiver general ſhall alſo, within 14 days after the expiration of the third calendar month from the time of the ſaid firſt payment, make a ſecond payment for four calendar months in advance; and within 14 days after the expiration of the third calendar month from the time of the ſaid ſecond payment, make a third payment for four calendar months in advance; for the pay and contingent expences of the militia, and for the allowances to the regimental or battalion clerk: and the receipt of ſuch clerk, and of ſuch captain of an independent company or of the perſon authorized by him as aforeſaid to receive the ſame, ſhall be a ſufficient diſcharge to the receiver general.

And the clerk of the regiment or battalion ſhall forthwith, after the receipt of ſuch ſums as aforeſaid, pay or cauſe to be paid one calendar month's pay in advance to the adjutant; and to the captain or commanding officer of each company two months pay in advance for the ſerjeants, and drummers; and alſo to the commanding officer of the company to which the ſerjeant major and drum major ſhall belong, two months pay in advance for ſuch ſerjeant and drum major; and ſo from time to time ſo long as any money on that account ſhall remain in his hands.

Which pay, every ſuch captain or commanding officer ſhall diſtribute to each perſon belonging to his company, as it ſhall become due; and ſhall once in every year give in to the clerk of the regiment or battalion (or if captain of an independent company, to the receiver general) an account of the ſeveral payments he ſhall have made in purſuance of this act, according to the following form:

County

County of — Dr.	l. s. d.	Per Contra — Cr.	l. s. d.
To caſh received of Mr. —— regimental or battalion clerk, or receiver general (as the caſe ſhall be) for two months pay in advance.	——	Paid ſerjeant —— for —— days pay from the — day of —— to the —— of —— following.	——
		Ditto as ſerjeant major.	——
		Paid —— drummer —— days at 6d, from the —— of —— to the —— of —— following.	——
		Ditto as drum major.	——

And ſhall pay back to the ſaid clerk or to the receiver general, as the caſe ſhall be, the ſurplus (if any) remaining in his hands.

Provided, that in caſe the commanding officer of any regiment, battalion, or independent company ſhall certify in writing to the clerk of the ſame, that he hath diſcharged any ſerjeant or drummer as unfit for ſervice; in ſuch caſe no pay ſhall be iſſued for the perſon ſo diſcharged, until another be duly appointed by him: And that no payment be made to any ſerjeant or drummer who hath been ſo diſcharged, or who hath not previouſly been approved of by the commanding officer, in caſe of vacancy by death or otherwiſe.

And the clerk of each regiment or battalion, out of the money hereby directed to be paid to him for defraying the *contingent expences*, ſhall yearly pay to the colonel or commanding officer one penny *per* month for each private man and drummer, for defraying the *hoſpital expences* during the time of the mens being abſent from home on account of their annual exerciſe; and ſhall from time to time pay ſuch ſums as may be neceſſary for the *repair of arms*, and the *carriage* and removal thereof, upon an order in writing ſigned by the colonel or commanding officer; and apply the reſidue for the general uſe and benefit of the regiment or battalion, in ſuch manner as the field officers and captains thereof, or the greater part of them, ſhall direct: and ſhall yearly make up an account of all ſuch money and the expenditure thereof, and deliver the ſame to the colonel or commanding officer, to be by him examined,

examined, allowed, and ſigned; which account ſo allowed and ſigned ſhall be the proper voucher and acquittal of ſuch clerk, for the application and diſpoſal of ſuch money.

And the money hereby directed to be iſſued for the contingent expences of each independent company ſhall be in like manner applied to the particular uſe of ſuch independent company by the captain thereof; and ſhall yearly be in like manner accounted for to the receiver general, whoſe allowance of ſuch account ſhall in like manner be the proper voucher for the expenditure and diſpoſition thereof.

And the ſaid regimental or battalion clerk may retain to his own uſe, out of the money ſo by him received, ſuch further ſums as ſhall complete the allowance herein before made for his ſalary.

And the receiver general, ſo ſoon as he ſhall receive a warrant under the hand of the colonel or commanding officer certifying the receipt of the cloathing, and an order from the ſaid colonel or commanding officer for the money due for the ſame payable to the perſon who furniſhed the ſaid cloathing, ſhall pay the ſum mentioned in ſuch order to the perſon intitled to receive the ſame; who ſhall give a receipt: Which warrant, order, and receipt, ſhall be a diſcharge to the receiver general.

And whenever his majeſty's lieutenant, or any three or more deputy lieutenants, ſhall have fixed the days of exerciſe *, they ſhall, as ſoon as may be, certify the ſame to

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* Here ſeems to be a miſtake. The days of exerciſe are to be fixed (as is above expreſſed) by his majeſty's lieutenant and two or more deputy lieutenants, and on the death or removal or in the abſence of his majeſty's lieutenant by three or more deputy lieutenants, at a general meeting. This clauſe ſuppoſeth, that his majeſty's lieutenant alone, or any three or more deputy lieutenants, may appoint ſuch time. By the ſtatute of 3 G. 3. *c.* 10. power was given for that particular year, by reaſon of inconveniencies that might happen from waiting until the time then limited for the general meeting, to his majeſty's lieutenant on or before the 30th of *April* to fix the time for training and exerciſe; and if he ſhould not within that time fix the ſame, then three or more deputy lieutenants were to do it. And in that caſe theſe words were proper——— "Whenever his majeſty's lieutenant, or any three or more "deputy lieutenants, ſhall have fixed the days of exer-"ciſe"

to the receiver general, ſpecifying the number of men, and the number of days they are to be abſent from home on account of ſuch exerciſe; which receiver general ſhall, within 14 days after the receipt of ſuch certificate, pay to the clerk of the regiment or battalion, at the rate of 7s 6d a day for each *captain*, and at the rate of 3s 6d a day for each *lieutenant*, and of 3s a day for each *enſign*; and alſo at the rate of 1s a day for each *private man*, with the addition of 6d a day for each *corporal*, for the number of days they ſhall be abſent on account of exerciſe; and in ſuch counties where there ſhall be independent companies only, the receiver general ſhall pay to the captains of the independent companies, at the rate of 7s 6d a day for each captain, and ſo of the reſt; and the ſaid regimental or battalion clerks ſhall forthwith pay to each captain of the ſaid regiments or battalions the proportion of pay belonging to each captain, and likewiſe the pay belonging to their reſpective companies.

And each captain ſhall make up an account of all money by him received on account of ſuch exerciſe, according to the following form;

County of —— Dr.	l. s. d.	Per Contra —— Cr.	l. s. d.
To caſh received of —— the regimental or battalion clerk, (or, —— receiver general, *as the caſe ſhall be*) for ——days pay of —— men ——	——	By my pay as captain	——
		Paid lieut. —	
		Paid enſign —	
		Paid — militia men — days	——
		Paid additional pay to ——corporals ——days	——

Which account ſhall be ſigned by ſuch captain, and counterſigned by the commanding officer; and the ſaid

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"ciſe"——But this was reſtricted to that year only. And theſe words in the preſent act are tranſcribed from the act in that year; though the circumſtances are very different.

captain

captain ſhall within ten days after the time of ſuch exerciſe, deliver ſuch account, and pay the balance (if any) to the regimental or battalion clerk; or if captain of an independent company, to the receiver general.

Provided always, that where any regiment, battalion or independent company of militia, ſhall be embodied and called out into actual ſervice, and thereby the officers and private men ſhall be intitled to the ſame pay as the officers and private men in his majeſty's other regiments of foot receive; all pay from the receiver general, whether to the adjutants, ſerjeants, private militia men or others, and all money allowed as aforeſaid for contingent expences, and alſo the allowance to the clerk of the regiment or battalion, ſhall during ſuch time of actual ſervice ceaſe and not be paid.

And the receiver general ſhall pay to the clerk of the general meetings his allowance, at the rate of 5l 5 s for each meeting, on his producing an order for that purpoſe from his majeſty's lieutenant, or from three deputy lieutenants aſſembled at a general meeting.

And ſhall alſo pay to each and every the clerks of the ſubdiviſion meetings, their ſeveral allowances at the rate of 1l 1s for each meeting; on his or their producing an order or orders reſpectively, from one or more deputy lieutenants aſſembled in the ſeveral ſubdiviſion meetings: which order ſhall be a ſufficient diſcharge to the receiver general, and be allowed in his account.

Provided always, that the regimental or battalion clerk ſhall give ſecurity to the receiver general, by bond to his majeſty, in the penalty of one half the ſum required for the whole year's charge of the regiment or battalion, for duly anſwering and paying ſuch ſums as he ſhall from time to time receive, and for duly accounting for the ſame, and for the performance of his truſt; which bond ſhall be lodged with the receiver general, and by him in caſe of failure ſhall be put in ſuit.

And the ſaid clerk of the regiment or battalion, and the captain of every independent company of militia, ſhall between *March* 25, and *June* 24, deliver to the receiver general a fair account in writing, of all money by him received and diſburſed for the ſervice of the preceding year, with proper vouchers for the ſame; and ſhall pay back to him any ſurplus that ſhall then be in his hands: which ſaid accounts, ſigned by ſuch clerk, or ſuch captain of an independent company reſpectively, ſhall be tranſmitted by the receiver general into the office of the auditor of the revenue.

And

And all penalties, coſts and charges of ſuit, and ſums of money for which any perſon is by this act made anſwerable, may be recovered in any of his majeſty's courts of record at *Weſtminſter*.

And no fee or gratuity ſhall be given or paid, for any warrant or ſum of money, which ſhall be iſſued in purſuance of this act.

Finally, any perſon being on half pay, or intitled to any allowance, as having ſerved in any or either of the two troops of horſe guards or regiment of horſe reduced, and ſerving in the militia, may receive the ſubſiſtence money by this act directed to be paid to captains, lieutenants, or enſigns, and it ſhall not prevent him from receiving his half-pay or ſuch allowance; he taking the following oath before a juſtice:

I A. B. *do ſwear, that I had not between the* ——— *any place or employment of profit, civil or military, under his majeſty, beſides my allowance of half pay as a reduced* ——— *in* ——— *late regiment of* ——— (or, *allowance as* ——— *in* ——— *late troop of horſe guards*, or, ——— *regiment of horſe reduced*) *ſave and except my ſubſiſtence as a captain, lieutenant*, or *enſign* (as the caſe may be) *for ſerving in the militia of the county of* ———

XII. Drawn out into actual ſervice.

To be drawn out in caſe of invaſion or rebellion.

1. In caſe of actual invaſion, or upon imminent danger thereof; or in caſe of rebellion in this kingdom (and by 16 *G.* 3. *c.* 3. which is of force for ſeven years, in caſe of rebellion within this kingdom or any of the territories or dominions thereunto belonging); it ſhall be lawful for his majeſty (the occaſion being firſt communicated to parliament, if the parliament ſhall be then ſitting; or declared in council, and notified by proclamation, if no parliament ſhall be then ſitting or in being) to order his lieutenants, and on their death or removal or abſence three deputy lieutenants, with all convenient ſpeed, to draw out and embody all the regiments and battalions of militia of their reſpective counties, ridings or places, already raiſed and not yet embodied, or herein appointed to be raiſed and trained, or ſo many of them as he ſhall judge neceſſary, in ſuch manner as ſhall be beſt adapted to the circumſtances of danger. 2 *G.* 3. *c.* 20. *ſ.* 116.

2. And

2. And if at ſuch time the parliament ſhall happen to be ſeparated, by ſuch adjournment or prorogation as will not expire within fourteen days; it ſhall be lawful for his majeſty to iſſue a proclamation, for the meeting of the parliament upon ſuch day as he ſhall thereby appoint, giving 14 days notice of ſuch appointment: and the parliament ſhall accordingly meet upon ſuch day, and continue to ſit and act, in like manner to all intents and purpoſes, as if it had ſtood adjourned or prorogued to the ſame day. 2 *G.* 3. *c.* 20. *ſ.* 117. Parliament then to meet.

3. And in ſuch caſe, his majeſty may direct the ſaid forces to be put under the command of ſuch general officers as he ſhall appoint. 2 *G.* 3. *c.* 20. *ſ.* 116. To be put under the command of general officers.

4. And direct them to be led by their reſpective officers, into any part of this kingdom, for the ſuppreſſion of ſuch invaſions and rebellions. 2 *G.* 3. *c.* 20. *ſ.* 116. And led to any part of the kingdom.

5. Provided, that neither the militia of this kingdom, nor any corps, detachment or draught thereof ſhall, on any account, be tranſported or carried out of the iſland of *Great Britain*. 2 *G.* 3 *c.* 20. *ſ.* 125. But not to go out of the kingdom.

6. And the ſaid officers of the militia, and private militia men, ſhall from the time of their being drawn out and embodied as aforeſaid, and until they be returned again to their reſpective pariſhes or places of abode, remain under the command of ſuch general officers; and ſhall be intitled to the ſame pay as the officers and private men in his majeſty's other regiments of foot receive, and no other; and the officers of the militia ſhall, during ſuch time, rank with the officers of his majeſty's other forces of equal degree with them, as the youngeſt of their rank; and during ſuch time as aforeſaid, all the proviſions contained in any act of parliament then in force for puniſhing mutiny and deſertion, and for the better payment of the army and their quarters, ſhall extend to the officers and private militia men (except only as to ſuch particulars as are or ſhall be otherwiſe ſpecially provided for by any act or acts of parliament for regulating the militia forces); and when they ſhall be returned again to their reſpective pariſhes or places of abode, they ſhall be under the ſame orders and directions only, as they were before they were drawn out and embodied as aforeſaid. 2 *G.* 3. *c.* 20. *ſ.* 116. To be ſubject to the acts againſt mutiny and deſertion.

Provided, that no officer ſerving in the militia, ſhall ſit in any court martial upon the trial of any officer or ſoldier ſerving in any of his majeſty's other forces; nor ſhall any officer ſerving in any of his majeſty's other

forces, ſit in any court martial upon the trial of any officer or private man ſerving in the militia. *ſ.* 121.

Penalty of not appearing.

7. And his majeſty's lieutenant, and on the death or removal or in the abſence of his majeſty's lieutenant three deputy lieutenants, ſhall iſſue their orders to the chief conſtables, with directions to forward the ſame immediately to the conſtables or other officers of the ſeveral pariſhes or places; and ſuch conſtables ſhall, upon receipt thereof, forthwith give, or leave in writing, notice, or cauſe ſuch notice to be given, to the ſeveral militia men, or left at the uſual places of their abode, to attend at the time and place mentioned in ſuch order. 2 *G.* 3. *c.* 20. *ſ.* 116.

And if any militia man ſo ordered to be drawn out and embodied as aforeſaid (not labouring under any infirmity incapacitating him to ſerve as a militia man) ſhall not appear and march in purſuance of ſuch order; he ſhall, on conviction before two juſtices, forfeit 40*l*, and if he ſhall not immediately pay the ſame, they ſhall commit him to the common gaol for twelve months, or until he ſhall have paid the ſame. *id.*

And if any perſon ſhall harbour or conceal any militia man, not attending when ordered into actual ſervice, knowing him to be a militia man; he ſhall, on conviction before one juſtice, forfeit 5*l*, by diſtreſs; and for want of ſufficient diſtreſs, ſuch juſtice ſhall commit him to the houſe of correction for two months, or cauſe him to be publickly whipped. *id.*

To receive one guinea when ordered to march.

8. When the militia ſhall be ordered out into actual ſervice, or ſhall be out in actual ſervice, the receiver general of the land tax for the reſpective county or place, ſhall pay to the captain or other commanding officer of ſuch company ſo ordered out or being out in ſervice, one guinea for each private militia man belonging to his company; to be paid over by ſuch captain or other officer to every ſuch private militia man who belonged to his company at the time ſuch militia was ordered out, on or before the day appointed for marching; and to ſuch militia man, who ſhall be afterwards ordered out, when he ſhall join his company. 2 *G.* 3. *c.* 20. *ſ.* 122.

Or otherwiſe, it ſhall be lawful for ſuch captain or other commanding officer to lay out the ſaid ſum in the manner moſt advantageous for ſuch militia man; giving an account within three months, or as ſoon as deſired, to the perſon ſo entitled to receive the ſaid ſum, how ſuch money has been expended. 19 *G.* 3. *c.* 72. *ſ.* 12.

9. In

9. In caſe any perſon ſhall be choſen by lot, and be ſworn and inrolled, or provide a ſubſtitute who ſhall be ſworn and inrolled, the churchwardens or overſeers of the place for which he ſerves, ſhall within one month after ſuch ſwearing and inrolling of the man ſo choſen by lot or of his ſubſtitute, pay to every ſuch perſon ſo choſen by lot, if the regiment or battalion ſhall be then embodied, any ſum not exceeding 5l, as two deputy lieutenants, or one deputy lieutenant and one juſtice, in whoſe preſence ſuch perſon ſhall be choſen by lot, ſhall adjudge (E) to be, as near as may be, one half of the current price then paid for a volunteer in the county or riding where ſuch perſon ſhall be choſen, and ſhall by order under their hands appoint accordingly: which ſum ſhall be taken out of the rate made for volunteers, or if no volunteers ſhall be provided by the churchwardens or overſeers of ſuch pariſh or place, then out of a rate to be made by the rule aforeſaid. 2 *G.* 3. *c.* 20. *ſ.* 47, 49. 19 *G.* 3. *c.* 72. *ſ.* 14.

To receive likewiſe a ſum from the proper pariſh.

Provided, that if ſuch man ſo choſen by lot, and ſerving for himſelf, ſhall within one month after his inrollment be diſapproved of and diſcharged by the commanding officer; no ſuch ſum ſhall be paid to the perſon ſo choſen by lot, but ſhall be paid to the next perſon choſen by lot in his ſtead: and if the ſubſtitute he ſhall have found be diſapproved in manner aboveſaid, then no ſuch ſum ſhall be paid to the man ſo choſen by lot, unleſs he ſhall ſerve himſelf or find another ſubſtitute. 2 *G.* 3. *c.* 20. *ſ.* 48.

And if any churchwarden or overſeer ſhall, on producing ſuch order, refuſe or neglect to pay ſuch ſum as aforeſaid, he ſhall forfeit 10l by diſtreſs by warrant of one juſtice; half to the perſon ſo choſen by lot as aforeſaid, and half to the clerk of the regiment or battalion, to be added to the common ſtock. 19 *G.* 3. *c.* 72. *ſ.* 14.

10. And the officers and private men who ſhall be drawn out and embodied, ſhall be intitled to pay from the day of the date of the king's warrant for that purpoſe. 2 *G.* 3. *c.* 20. *ſ.* 118.

Pay to commence from the date of the king's warrant.

11. By the 2 *G.* 3. *c.* 20. When the militia ſhall be ordered out into actual ſervice as aforeſaid; it ſhall be lawful for the captain of any company, to augment his company, by incorporating, with the conſent of his majeſty's lieutenant, or in his abſence of two deputy lieutenants, any number of perſons who ſhall offer themſelves as volunteers, and who ſhall appear to him to be ſufficiently

Volunteer companies.

ficiently trained and diſciplined, and provided with proper cloaths, arms and accoutrements, and who ſhall take the ſaid oath, and ſign their conſent to ſerve in the militia for the time of ſuch actual ſervice, and to ſubmit to the ſame rules and articles of war as militia men are by this act liable to during the time of their continuing in actual ſervice. 2 *G.* 3. *c.* 20. *ſ.* 120.

And by the 18 *G.* 3. *c.* 59. It ſhall be lawful for the commanding officer, with the conſent of his majeſty's lieutenant, or in the abſence of his majeſty's lieutenant with the conſent of two deputy lieutenants, to accept a number of volunteers to ſerve in the ſaid militia, either to be incorporated into the other companies, or to be formed into a diſtinct company; in which latter caſe, his majeſty's lieutenant (or in the abſence of his majeſty's lieutenant out of the kingdom, two deputy lieutenants, 20 *G.* 3. *c.* 44.) may grant commiſſions to officers legally qualified to command the ſame. Provided that the number of volunteers in any battalion ſhall not exceed the number of men contained in any one company of the ſaid battalion: and though ſuch volunteers ſhall not be provided with proper cloaths, arms and accoutrements, upon the repreſentation of his majeſty's lieutenant or two deputy lieutenants, ſuch volunteers ſhall have the ſame allowance, with regard to pay, arms, cloaths and accoutrements, as militia men are by law intitled to, during the time of their continuance in actual ſervice. *ſ.* 8, 9.

And by the 19 *G.* 3. *c.* 76. (which is of force till *Dec.* 1, 1782.) If any perſon properly qualified according to the laws now in force ſhall offer to his majeſty's lieutenant to raiſe one or more companies to be added to the regiment or battalion of any county or riding; it ſhall be lawful for his majeſty's lieutenant (or in the abſence of his majeſty's lieutenant out of the kingdom, for two deputy lieutenants, 20 *G.* 3. *c.* 44.) to accept ſuch offer, and appoint officers accordingly; and ſhall certify to his majeſty the names and ranks of ſuch officers within one month after they ſhall be ſo appointed: and if the king ſhall, within one month after ſuch certificate, certify his diſapprobation of any ſuch perſon, the lieutenant ſhall not grant to him a commiſſion; but ſhall grant commiſſions to ſuch perſons ſo appointed who ſhall not be diſapproved by his majeſty. And on the certificate of his majeſty's lieutenant, or of the commanding officer of the regiment or battalion, that ſuch companies are actually raiſed; they ſhall be

be intitled to the ſame allowance of bounty, ſubſiſtence money, arms, and cloathing, and be ſubject to the ſame regulations in every reſpect as the reſt of his majeſty's militia forces. Provided, that when ſuch volunteer companies ſhall be added to any regiment, ſuch addition ſhall not make it neceſſary to ſeparate ſuch regiment into two battalions; but ſuch regiment ſhall remain and continue one regiment. And the ſaid volunteer companies ſhall be reduced and diſſolved, when the militia ſhall be diſembodied, or at ſuch earlier period as his majeſty ſhall think it.

And by the 20 *G.* 3. *c.* 44. All perſons who have inliſted themſelves in any volunteer company raiſed in purſuance of the ſaid act of the 18 *G.* 3. for the term of *three years unleſs ſooner diſcharged*, or for the term of *three years*, or as private ſoldiers therein *without any time expreſſed*; ſhall be intitled to their diſcharge at the expiration of three years from the time of their inrollment, or at ſuch time within the ſaid three years as the militia ſhall be diſembodied, or at ſuch earlier period as his majeſty ſhall think fit to reduce the volunteer companies.—And ſuch perſons who have inliſted themſelves to ſerve for *three years or during the war*, or to ſerve *during the preſent war*, or to ſerve *according to the proviſions of the ſaid act* of the 19 *G.* 3. ſhall not be intitled to their diſcharge till the militia ſhall be diſembodied, or till ſuch earlier period as his majeſty ſhall think fit to reduce the volunteer companies.—— And all perſons that ſhall after July 1, 1780, inliſt themſelves in volunteer companies, ſhall be inliſted to ſerve till ſuch time as the militia ſhall be diſembodied, or till ſuch earlier period as his majeſty ſhall think fit to reduce the volunteer companies, and for no other period.

And by the 21 *G.* 3. *c.* 7. Whereas many ſuch volunteer companies have been raiſed in purſuance of the ſaid act of the 19 *G.* 3. and it is not expedient that any more ſhould be raiſed at preſent, it is therefore enacted, that no more ſuch volunteer companies ſhall be raiſed or added to any regiment or battalion of militia, until his majeſty ſhall authorize the ſame by proclamation or order in council; and that from and after the iſſuing of ſuch proclamation, the ſaid act ſhall be in full force and effect during the preſent hoſtilities: Provided, that nothing herein ſhall extend to affect any ſuch volunteer companies as have been already raiſed and added to any regiment or battalion; but that, with reſpect to ſuch laſt mentioned volunteer companies, the ſaid act ſhall remain in full force and effect.

Fencible men.

12. Whereas his majeſty has thought proper to direct, that fencible men in ſeveral of the ſhires of that part of *Great Britain* called *Scotland* ſhall be raiſed and embodied, and the officers ſerving in ſuch corps of fencible men will not be intitled to half pay nor to have rank in the army after they ſhall be diſembodied; and whereas his majeſty may think proper to grant commiſſions to officers to raiſe corps for the defence of this country, the officers of which corps may likewiſe not be intitled to half pay, nor to have rank in the army after they ſhall be diſembodied; it is enacted, that the acceptance of a commiſſion in any corps of fencible men raiſed in that part of *Great Britain* called *Scotland*, or in any other corps which his majeſty may authorize and direct to be raiſed in any part of *Great Britain*, ſhall not vacate ſuch officer's ſeat in parliament: and, during the time that the officers of ſuch corps and of the militia ſhall ſerve together, they ſhall rank according to the date of their reſpective commiſſions. 18 *G.* 3. *c.* 59. *ſ.* 4, 5.

Half pay officers.

13. No perſon who is intitled to half pay ſhall be deemed to forfeit or quit ſuch half pay, during the time that he ſhall ſerve as lieutenant, enſign, adjutant, quarter-maſter, or ſurgeon in any regiment of militia, but the ſame ſhall nevertheleſs continue; and inſtead of the oath now appointed, ſuch officer ſhall take the following oath: *I* A. B, *do ſwear, that I had not, between the* —— *any place or employment of profit, civil or military, under his majeſty, beſides my allowance of half pay, as a reduced* —— *in* —— *late regiment of* —— (or, *allowance as* —— *in* —— *late troop of horſe guards, or,* —— *regiment of horſe reduced,*) *ſave and except my pay as lieutenant, enſign, adjutant, quarter-maſter,* or *ſurgeon* (as the caſe may be) *for ſerving in a regiment of militia.*

If it is in a regiment of fencibles, then the laſt word *militia* muſt be altered to the words *fencible men*.

And the taking of the ſaid oath ſhall be ſufficient to intitle ſuch perſon to receive his half pay, or the ſaid allowance, without taking any other oath. 19 *G.* 3. *c.* 72. *ſ.* 16, 17. †

† Note, It is not here expreſſed by whom this oath is to be adminiſtred. In the annual acts (as is aforeſaid) for the pay and cloathing of the unembodied militia, there is a like oath to be taken by captains, lieutenants, and enſigns, which is to be taken before ſome juſtice of the peace.

More-

Moreover, any perſon being a ſerjeant on the eſtabliſhment of *Chelſea* hoſpital, at an allowance of 12d a day, and being appointed to ſerve in any corps of fencible men, may receive the ſaid allowance of 12d a day, together with his pay from the ſaid corps of fencible men. *ſ.* 18.

XIII. Privileges and exemptions of militia men.

1. No perſon, during the time he is acting as a militia officer, ſhall be obliged to ſerve the office of ſheriff. 2 *G.* 3. *c.* 20. *ſ.* 34. Officers exempted from the office of ſheriff.

2. No ſerjeant or private man, ſerving in the militia, ſhall, during the time of ſuch ſervice, be liable to do perſonally any highway duty, commonly called ſtatute work. 2 *G.* 3. *c.* 20. *ſ.* 76. Private men, exempted from highway duty.

3. Or be appointed to ſerve, as a peace officer, or pariſh officer. *id.* From offices.

4. Nor ſhall be liable to ſerve, in any of his majeſty's land or ſea forces, unleſs he ſhall conſent thereto. *id.* From ſerving in the other forces.

5. If any man, ſerving in the militia, ſhall, on the march, or at the place where he ſhall be called out to annual exerciſe, be diſabled by ſickneſs or otherwiſe; it ſhall be lawful for one juſtice, or mayor, where ſuch man ſhall then be, by his warrant to order him ſuch relief as he ſhall think reaſonable: And the officers of the pariſh or place where ſuch militia man ſhall be ſo relieved, on producing an account of the expences occaſioned thereby, allowed under the hand of a juſtice, to the treaſurer of the county or place for which ſuch man ſhall ſerve, ſhall be reimburſed the ſame by the ſaid treaſurer out of the county ſtock. 4 *G.* 3. *c.* 17. *ſ.* 5. Falling ſick.

6. If any militia man, who ſhall have been choſen by lot, ſhall, when embodied and called out into actual ſervice, and ordered to march, leave a family unable to ſupport themſelves, the overſeers of the poor of the pariſh, tithing, or townſhip where the family of ſuch militia man ſhall dwell, ſhall by order of one juſtice (F), out of the poor rates of ſuch place, pay to ſuch family a weekly allowance, according to the uſual and ordinary price of labour in huſbandry within the county, riding, diviſion, diſtrict or place where ſuch family ſhall dwell, by the following rule; that is to ſay, for one child under the age of ten years, any ſum not exceeding the price of one day's labour; for two children under Balloted men leaving families.

der the age aforeſaid, any ſum not exceeding the price of two days labour; for three or four children under the age aforeſaid, any ſum not exceeding the price of three days labour; for five or more children under the age aforeſaid, any ſum not exceeding the price of four days labour; and for the wife of ſuch militia man, any ſum not exceeding the price of one day's labour; and the ſame ſhall be forthwith reimburſed to ſuch overſeer, by the treaſurer of the county, riding or place where ſuch pariſh, tithing or townſhip ſhall be ſituate, out of the public ſtock. 2 *G.* 3. *c.* 20. *ſ.* 81.

And the treaſurer of every county, riding, diviſion, and place, ſhall keep diſtinct accounts of all the monies by him reimburſed to ſuch overſeers as aforeſaid; and ſhall at the end of every ſix calendar months, return the ſaid accounts, together with the accounts which he ſhall have received from the ſeveral treaſurers of the cities, towns, liberties, or places, to the office of the treaſurer's remembrancer of the court of exchequer. *ſ.* 82.

And in all cities, towns, liberties, diviſions and places, which are not liable to contribute to the county rates by virtue of the act of the 12 *G.* 2. *c.* 29. the juſtices of the peace for every ſuch city, town, liberty, diviſion and place, at any ſeſſions or meeting, may and ſhall appoint a treaſurer, and ſhall aſſeſs upon every pariſh, tithing, townſhip, hamlet or vill, within their juriſdictions, in ſuch proportions as the rates heretofore made for the relief of the poor have been uſually aſſeſſed, and ſhall cauſe to be paid out of the money collected and levied for the relief of the poor of every ſuch pariſh, tithing, townſhip, hamlet or vill, into the hands of ſuch treaſurer, ſuch ſums as they in their diſcretion ſhall think ſufficient for reimburſing to the overſeers of the poor of the ſeveral pariſhes, tithings, townſhips, hamlets or vills within their juriſdictions, the amount of the weekly allowances paid by ſuch overſeers to the families of the militia men reſiding within their juriſdictions; and every ſuch treaſurer ſhall forthwith reimburſe the ſame to every ſuch overſeer accordingly. And ſuch treaſurer ſhall keep diſtinct accounts of all monies ſo paid into his hands, and by him reimburſed to ſuch overſeer as aforeſaid; and ſhall, at the end of every ſix calendar months tranſmit the ſaid accounts to the treaſurer of the county or riding which ſuch city, town, liberty, diviſion and place, is by this act united with and made part of for the purpoſes

of

of the ſaid act. (Provided that the treaſurer of the city of Lincoln and county of the ſaid city, ſhall tranſmit his accounts to the treaſurer of the diviſion of Lindſey within the county of Lincoln.) *ſ.* 83.

Provided, that within the city and county of the city of *Exeter*, the allowances to the families ſhall be paid by the treaſurer of the corporation of the governor, deputy governor, aſſiſtants and guardians, of the poor of the city and county of Exeter. *ſ.* 84.

And the monies to be levied by pariſh rates within the city and county of the city of *Briſtol*, by virtue of this act, ſhall be raiſed as other money for the relief of the poor there by virtue of any act or acts of parliament relating thereto. *ſ.* 85.

And the treaſurer of any county, riding, city, town, liberty, diviſion or place, who ſhall reimburſe to any overſeer as aforeſaid any ſum of money in purſuance of this act, on account of the weekly allowance to the family of any militia man ſerving in the militia of any county, riding, city, town, liberty, diviſion or place, other than the county, riding, city, town, liberty, diviſion or place where ſuch family ſhall dwell, ſhall deliver or tranſmit an account of ſuch money as he ſhall have ſo reimburſed as aforeſaid, ſigned by one or more juſtices of the place where ſuch family ſhall dwell, to the treaſurer of the county, riding, city, town, liberty, diviſion or place, in the militia whereof ſuch militia man ſhall ſerve; and thereupon the treaſurer to whom ſuch account ſhall have been delivered or tranſmitted, ſhall pay to the treaſurer who ſhall have ſo delivered or tranſmitted ſuch account, the ſums ſo by him reimburſed to ſuch overſeers of the poor, and ſhall be allowed the ſame in his accounts. *ſ.* 86.

Subſtitutes families becoming chargeable.

7. Whereas the families of ſubſtitutes, hired men, or volunteers, ſerving in the militia when embodied and ordered to march, may become chargeable to the pariſhes to which they belong, it is enacted, that in caſe any ſubſtitute, whoſe family may ſo become chargeable, ſhall not ſerve for the pariſh where his family ſhall dwell, it ſhall be lawful for the juſtice, who ſhall make any order (G) for the relief of ſuch family, at the ſame time to direct the overſeers of the pariſh for which he ſhall ſerve, to reimburſe the money ſo paid to the overſeer or overſeers who ſhall have advanced the ſame in purſuance of the order before mentioned, if ſuch pariſh ſhall be ſituated within the ſame county. 19 G. 3. *c.* 72. *ſ.* 2.

And

And if the ſubſtitute, whoſe family ſhall be ſo relieved as aforeſaid, ſhall ſerve for any pariſh ſituate in another county, the monies advanced by the overſeers of the pariſh, townſhip, or place where the family ſhall dwell, ſhall be repaid to them out of the county ſtock, by the treaſurer of their reſpective county, on producing a certificate of the order of the juſtice allowing ſuch relief (which certificate ſuch juſtice ſhall grant accordingly); and the treaſurer who ſhall repay ſuch overſeer, ſhall tranſmit ſuch certificate, and alſo an account of all monies ſo repaid by him from time to time, quarterly, to the treaſurer of the county, riding, or place, in the militia whereof ſuch ſubſtitute ſhall ſerve; and the treaſurer, to whom the ſame ſhall have been ſo tranſmitted, ſhall forthwith reimburſe the ſame to the treaſurer from whom the ſaid account was received; which account, ſo received and reimburſed, ſhall be laid before the juſtices at their next general or quarter ſeſſions for ſuch county, riding, or place, for their allowance thereof; which ſaid juſtices ſhall allow the ſame accordingly, and forthwith make an order to the overſeers of the pariſh, townſhip, or place for which ſuch ſubſtitute ſhall ſerve, to make good the ſame to the treaſurer of the county, out of the poor rates of ſuch pariſh, townſhip, or place. Provided, that in all places having peculiar juriſdictions, and not contributing to the county, ſuch account ſhall be made over to the treaſurer, receiver, or other public officer, belonging to ſuch peculiar juriſdiction; to be by him reimburſed, accounted for, and allowed in manner aforeſaid. *ſ.* 4, 5.

And provided always, that no ſuch allowance to the families of ſuch ſubſtitutes ſhall occaſion ſuch family to be removeable, or compelled to be ſent to any workhouſe or poor houſe: nor ſhall ſuch ſubſtitute be thereby deprived of his legal ſettlement elſewhere; nor of his right of voting for the election of members to ſerve in parliament. *ſ.* 3.

Intitled to Chelſea hoſpital.

8. If any non-commiſſion officer, or private militia man, ſhall be maimed or wounded in actual ſervice; he ſhall be equally intitled to the benefit of Chelſea hoſpital, with any non-commiſſion officer or private ſoldier belonging to his majeſty's other forces. 2 *G.* 3. *c.* 20. *ſ.* 116.

May ſet up trades.

9. And alſo every ſuch perſon, having ſerved in the militia when called out into actual ſervice, and being a married man, may ſet up and exerciſe any ſuch trade as he is apt and able for, in any town or place within Great Britain or Ireland, without any moleſtation by reaſon

reaſon of the uſing of ſuch trade; in like manner as any mariner or ſoldier may do by the ſtatute of the 22 G. 2. c. 44. 2 G. 3. c. 20. ſ. 79.

10. No private militia man ſhall be intitled to his cloaths to his own uſe, till he hath ſerved three years, if unembodied; if embodied, to be applied, at the end of one year, as the commanding officer ſhall judge beſt for the uſe of ſuch militia man. 2 G. 3. c. 20. ſ. 80. In what caſe he ſhall be intitled to his cloaths.

XIV. General power of inforcing the execution hereof.

Beſides the particular penalties for particular offences, as above ſpecified; there are ſeveral general directions for inforcing the execution of theſe acts, which are as followeth:

1. All chief conſtables, petty conſtables, tithing men, headboroughs, and other officers of hundreds, rapes, laths, wapentakes, pariſhes, tithings and places, ſhall be aiding and aſſiſting to his majeſty's lieutenants, and their deputy lieutenants, and juſtices, and to all to whom any power is by this act given, in the execution hereof. 2 G. 3. c. 20. ſ. 115. Conſtables and other officers to attend.

2. And it ſhall be lawful for the deputy lieutenants and juſtices within their ſubdiviſions, from time to time, to iſſue out their order or warrant under their hands and ſeals, commanding the attendance of the conſtable, tithingman, headborough, or other officer of any pariſh, tithing or place within their ſubdiviſions, at ſuch times and places as in ſuch order or warrant ſhall be expreſſed; and if they ſhall refuſe or neglect to appear, they ſhall ſuffer as followeth: General penalty on their neglect or diſobedience.

That is to ſay, if any ſuch officer ſhall refuſe or neglect to comply with ſuch orders and directions as he ſhall from time to time receive, from his majeſty's lieutenant, deputy lieutenants, and juſtices as aforeſaid; in ſuch caſe, three deputy lieutenants, or two deputy lieutenants together with one juſtice, or one deputy lieutenant together with two juſtices, ſhall impriſon him in the common gaol, there to be kept without bail or mainprize for the ſpace of one month; or fine him not exceeding 5l, nor under 40s, by diſtreſs; rendering the overplus on demand, after deducting the charge of diſtreſs and ſale. 2 G. 3. c. 20. ſ. 71.

3. And in all caſes, where the lieutenant, deputy lieutenants, or juſtices are by this act required to examine, hear and determine; all witneſſes ſhall be examined upon oath: which oath, ſuch lieutenant, deputy lieu- Power to adminiſter an oath.

lieutenants, and juſtices, or any one of them, are impowered to adminiſter. *ſ.* 130.

Indemnity of lieutenants and deputy lieutenants.

4. The benefit of the act of the 24 *G.* 2. *c.* 44. for rendering juſtices more ſafe in the execution of their office, and for indemnifying conſtables and others acting in obedience to their warrants, ſhall be extended to the lieutenants and deputy lieutenants. 18 *G.* 3. *c.* 59 *ſ.* 28.

General levying and application of the forfeitures.

5. All fines, penalties and forfeitures by this act impoſed, the manner of recovery whereof is not in this act particularly provided for, ſhall on proof upon oath before one juſtice, be levied by diſtreſs by warrant of ſuch juſtice; and where the goods of ſuch offender ſhall not be ſufficient to anſwer the diſtreſs, ſuch juſtice ſhall commit him to the common gaol, for any time not exceeding three months: And all fines, penalties and forfeitures by this act impoſed, the application whereof is not otherwiſe particularly provided for, ſhall be paid to the clerk of the regiment or battalion, and be made a common ſtock; and the ſaid clerk ſhall give a particular account thereof, as it ſhall ariſe, to the colonel or commanding officer; who ſhall cauſe butts to be erected in ſome convenient place, and ſhall direct the clerk of the regiment or battalion to buy and provide with ſome part of the money ſo ariſing a proper quantity of gunpowder and ball, to be uſed at proper times by the militia men in ſhooting at marks; and to diſpoſe of ſuch other part thereof as he ſhall think reaſonable, in ſome prizes to be given to ſuch militia men, as ſhall by the commanding officer then preſent be adjudged to be the beſt markſmen; and to apply the reſidue thereof to other contingencies, relating to the regiment or battalion. 2 *G.* 3. *c.* 20. *ſ.* 128.

Commitment to the houſe of correction.

6. In all caſes, when any perſon ſhall be committed to the houſe of correction by virtue of this act; he ſhall, during the time of ſuch commitment, be kept to hard labour. *ſ.* 129.

Certiorari.

7. No order or conviction made by any of his majeſty's lieutenants, or by three deputy lieutenants, or by two deputy lieutenants together with one juſtice, or by one deputy lieutenant together with two juſtices, or by any juſtice or juſtices, by virtue of this act, ſhall be removed by certiorari, nor execution or other proceedings upon ſuch order be ſuperſeded thereby. *ſ.* 131.

Treble coſts.

8. If any ſuit be commenced againſt any perſon, for any thing done in purſuance of this act; the action ſhall be laid in the proper county, within ſix months, and not afterwards; and the defendant may plead the general iſſue, and if he prevails ſhall have treble coſts. *ſ.* 147.

XV. Puniſh-

XV. Puniſhment of ſerjeants, drummers, and fifers, for diſobedience or deſertion.

Puniſhment for diſobedience.

1. By the 4 *G.* 3. *c.* 17. If any *drummer* during the time the militia ſhall not be called out, ſhall be negligent in his duty, or diſobedient to the orders of the adjutant or other his ſuperior officer, and thereof be convicted on the oath of the adjutant or other his ſuperior officer or other credible witneſs, before one juſtice of the county in the militia of which ſuch drummer ſerves; he ſhall forfeit any ſum not exceeding 40 s, and if not paid immediately, the captain or commanding officer of the company to which ſuch drummers belong ſhall ſtop his pay, until the ſame ſhall amount to the ſum aſcertained by the juſtice; and the ſaid captain or commanding officer ſhall pay the ſame to the clerk of the regiment or battalion, to be applied as part of the common ſtock. *ſ.* 8.

And by the 7 *G.* 3. *c.* 17. If any *ſerjeant major*, *ſerjeant*, *drum major*, *drummer*, *or fifer*, engaged to ſerve in the militia, and who ſhall have received any pay therein, ſhall, during the time ſuch militia is not in actual ſervice or out at annual exerciſe, miſbehave, be negligent in his duty, or diſobedient to the orders of the adjutant or other his ſuperior officer, and be thereof convicted on the oath of the adjutant or other his ſuperior officer, or other credible witneſs, before one juſtice of the county or place to the militia whereof ſuch offender ſhall belong; he ſhall, over and above any penalty or puniſhment by any former law, be committed to the common gaol of the county or place wherein he ſhall be engaged to ſerve in the militia, for any time not exceeding ſix months. *ſ.* 19.

For deſertion.

2. If any ſerjeant major, ſerjeant, drum major, drummer, or fifer, during the time the militia is not in actual ſervice or out at annual exerciſe, ſhall deſert from the regiment, battalion, or independent company, in which he ſhall be inrolled to ſerve; it ſhall be lawful for the conſtable of the town or place where any perſon may be reaſonably ſuſpected to be ſuch a deſerter, and ſhall be found, to apprehend or cauſe him to be apprehended and brought before a juſtice in or near ſuch place; who ſhall examine him: And if by his confeſſion, or oath of one witneſs, or the knowledge of ſuch juſtice, he ſhall appear to be a deſerter; the juſtice ſhall forthwith cauſe him to be conveyed to the gaol of the county or place where he ſhall be found, or to the houſe of correction or other publick priſon of the town or place where he ſhall be apprehended;

hended; and tranſmit an account thereof to the ſecretary at war. And the keeper of ſuch houſe or priſon ſhall receive the ſubſiſtence of ſuch deſerter, during the time that he ſhall continue in his cuſtody; but ſhall not be intitled to any fee or reward on account of his impriſonment. 7 *G.* 3. *c.* 17. *ſ.* 20.

And the ſecretary at war, on receiving ſuch account, if the deſerter ſhall be taken out of the county to the militia whereof he ſhall belong, ſhall iſſue an order under his hand and ſeal, to the keeper of the priſon where ſuch deſerter ſhall be confined, requiring him to deliver ſuch deſerter to the perſon therein named; and ſuch perſon ſhall thereupon convey the ſaid deſerter, in ſuch manner and by ſuch means as the ſecretary at war ſhall direct, before a juſtice of the county to the militia whereof ſuch deſerter ſhall belong; who ſhall forthwith cauſe him to be conveyed to the gaol, houſe of correction, or other publick priſon, within the ſaid county. *ſ.* 21.

And the ſaid deſerter ſhall be kept in ſuch priſon, till the regiment, battalion, or independent company to which he belongs, ſhall be called out to annual exerciſe, or embodied and called forth into actual ſervice, which ſhall firſt happen; and the then commanding officer ſhall iſſue out an order under his hand and ſeal, to the keeper of the priſon where ſuch deſerter ſhall be confined, requeſting him to deliver the deſerter to the perſon or perſons therein named; and the ſaid officer ſhall ſummon and hold a court martial, and try ſuch deſerter, and if found guilty puniſh him, agreeable to the powers and proviſions of the articles of war and the act againſt mutiny and deſertion. *ſ.* 22.

And if any of the ſaid perſons ſhall deſert during the time of actual ſervice, or at annual exerciſe, and ſhall not be apprehended during ſuch time; he may be apprehended and proceeded againſt in the ſame manner as is above directed in the caſe of deſerting when the militia are not in actual ſervice or out at annual exerciſe. *ſ.* 23.

And the juſtice before whom ſuch deſerter ſhall be committed [*convicted*, ſeems to have been the word intended, that is, the juſtice before whom the deſerter was firſt brought] ſhall iſſue his warrant to the clerk of the regiment, battalion, or independent company, requiring him to pay out of the ſtock belonging to ſuch regiment, battalion or independent company, to the perſon who ſhall have apprehended ſuch deſerter, the ſum of 20*s*. *ſ.* 24.

And if any perſon ſhall knowingly harbour, conceal, or aſſiſt ſuch deſerter, he ſhall forfeit 5*l*, to be levied as any penalties or forfeitures by the 2 *G.* 3. *c.* 20.

XVI. Ex-

XVI. Exceptions with reſpect to particular places and perſons.

1. His majeſty's lieutenants commiſſioned for the militia of the city of *London*, ſhall continue to liſt and levy the trained bands and auxiliaries of the ſaid city in manner as heretofore. 2 *G.* 3. *c.* 20. *ſ.* 140. The city of London.

2. It ſhall be lawful for the conſtable of the tower, or lieutenant of the tower hamlets, for the time being, from time to time to appoint his deputy lieutenants, and to give commiſſions to a proper number of officers to train and diſcipline the militia to be raiſed within and for the ſaid diviſion, purſuant to the ſtatute of the 13 & 14 *C.* 2, and to form the ſame into two regiments of eight companies each, in ſuch manner as the ſaid conſtable or lieutenant hath uſed to do: and alſo, for defraying the neceſſary charge of trophies and other incident expences of the militia of the ſame diviſion, it ſhall be lawful for his majeſty's ſaid conſtable or lieutenant, to continue to raiſe in every year the proportion of a fourth part of one month's aſſeſſment of trophy money, within the ſaid diviſion or hamlets, in ſuch manner as he hath uſed to do by the ſaid act of the 13 & 14 *C.* 2. *id. ſ.* 141. The tower hamlets.

And his majeſty's ſaid conſtable of the tower, or lieutenant of the tower hamlets, ſhall appoint a treaſurer of the ſaid trophy money, for receiving and paying ſuch monies as ſhall be levied by the ſaid act of *C.* 2. who ſhall yearly account in writing and upon oath for the ſame to the ſaid lieutenant or his deputy lieutenants or any three of them; which account ſhall be certified to the juſtices for the ſaid diviſion at their next ſeſſions. And the ſaid conſtable or lieutenant ſhall not iſſue out warrants for raiſing any trophy money, until the juſtices at ſuch ſeſſions ſhall have examined, ſtated and allowed the accounts of the trophy money raiſed for the preceding year, and certify the ſame under the hands and ſeals of four ſuch juſtices; unleſs where it ſhall appear to ſuch juſtices, that by reaſon of the death of ſuch treaſurer or otherwiſe, ſuch accounts cannot be paſſed. *ſ.* 142.

3. Nothing in this act ſhall extend to the tinners in *Devon* and *Cornwall*; but the lord warden of the ſtanneries for the time being, in purſuance of his majeſty's commiſſion in that behalf, and ſuch as he ſhall commiſſionate and authorize under him, ſhall uſe the like powers, and array, aſſeſs, arm, muſter and exerciſe the ſaid tinners, as has been heretofore uſed, and according to the ancient privileges and cuſtoms of the ſtanneries. *ſ.* 139. The ſtanneries.

4. The

The cinque ports.

4. The lord warden of the cinque ports, two ancient towns, and their members, and in his abſence his lieutenant or lieutenants, ſhall put in execution within the ſame all the powers and authorities granted by any former act or acts, in like manner as his majeſty's lieutenants of counties and their deputy lieutenants may do; and may keep up and continue the uſual number of ſoldiers in the ſaid ports, towns and members, unleſs he or they find cauſe to leſſen the ſame: and the militia of the ſaid ports, towns and members, ſhall remain ſeparate from the militia of the ſeveral counties within which the ſaid ports, towns and members are ſituate. *ſ.* 143.

County of Suſſex.

5. In the county of *Suſſex*, the churchwardens and overſeers of the poor of the ſeveral pariſhes ſhall execute the powers given elſewhere to the conſtables and other peace-officers. 19 *G.* 3. *c.* 72. *ſ.* 25.

Iſle of Wight.

6. After the number of perſons, which the *Iſle of Wight* is to furniſh to the militia of the county of *Southampton*, ſhall have been appointed by his majeſty's lieutenant and the deputy lieutenants, or by the deputy lieutenants of the ſaid county at large; the governor of the ſaid iſland ſhall appoint the officers of the militia there, as his majeſty's lieutenants of counties may do; and ſhall appoint five or more deputies to act with him; which deputies and officers ſhall be qualified and act as is preſcribed with reſpect to like officers in *Wales*. And the militia of the ſaid iſland ſhall be raiſed in the ſame manner as the militia of the county of *Southampton*, and ſhall be deemed a part of the militia of the ſaid county. And after the ſame ſhall be ſo raiſed, the governor, lieutenant governor and deputies ſhall order and direct the training and exerciſing the militia within the ſaid iſland, in the ſame manner as the lieutenants and deputy lieutenants may do elſewhere. *ſ.* 127.

Berwick upon Tweed.

7. All proviſions made for the county of *Northumberland* and the militia thereof, ſhall be in force with reſpect to the town of *Berwick upon Tweed*, except only as to the particulars here expreſſed and otherwiſe provided for: and out of the perſons returned in the liſts for the ſaid town a number of private militia men ſhall be choſen by lot to ſerve for the ſaid town, in the ſame proportion with the private militia men appointed to ſerve for the other reſpective hundreds, wards, and other diviſions within the ſaid county of *Northumberland:* and if perſons can be found within the ſaid town and liberties thereof, with ſuch qualifications as are required for deputy lieutenants and officers within cities and towns which are counties of

themſelves; the chief magiſtrate of the ſaid town of *Berwick* ſhall appoint five deputy lieutenants, and ſuch number of officers of the militia as ſhall be proportionable to the number of militia men which the ſaid town ſhall raiſe, as their quota towards the militia of the county of *Northumberland*. And the ſaid militia ſhall annually join the militia of the county of *Northumberland*, and be exerciſed together, and ſhall then, and alſo in time of actual ſervice, be deemed the militia of the county of *Northumberland* for the purpoſes aforeſaid. *ſ.* 126.

Pariſh in different counties.

8. Where any pariſh ſhall lie in more counties or ridings than one; the inhabitants of ſuch pariſh ſhall ſerve in the militia of that county or riding, wherein the church belonging to ſuch pariſh is ſituated. *ſ.* 132.

Quakers.

9. If a quaker ſhall be choſen by lot to ſerve in the militia, and ſhall refuſe or neglect to appear and to take the oath in that behalf provided, and to ſerve in the ſaid militia, or to provide a ſubſtitute to be approved as aforeſaid; three deputy lieutenants, or two deputy lieutenants together with one juſtice, or one deputy lieutenant together with two juſtices, ſhall, if they think proper, upon as reaſonable terms as may be, provide and hire a fit perſon, who ſhall take the ſaid oath, and ſubſcribe his conſent to ſerve in the ſaid militia for the ſpace of three years, as the ſubſtitute of ſuch quaker; and ſhall levy (H) by diſtreſs and ſale of the goods and chattels of ſuch quaker, ſuch ſum or ſums as ſhall be neceſſary to defray the expence of providing and hiring ſuch perſon to ſerve in the ſaid militia for the ſpace of three years, as the ſubſtitute of ſuch quaker, rendering the over-plus, after deducting the charges of diſtreſs and ſale. And if any meaſures ſhall be uſed in making diſtreſs, which may by ſuch quaker be thought oppreſſive, he may complain thereof to the deputy lieutenants and juſtices at their next meeting, who ſhall hear and finally determine the ſame. *ſ.* 87.

And in every place where any rate as is aforeſaid ſhall be made, where the churchwardens or overſeers ſhall complain to a juſtice, that a quaker or quakers refuſe to pay his or their aſſeſſment; ſuch juſtice may order ſuch coſts and charges for levying the diſtreſs, as he ſhall think reaſonable, not exceeding 10s, on each of the ſaid quakers, where there are no more than two of them, and where there are a greater number, not exceeding 5s, on each. *ſ.* 88.

But no perſon ſhall be deemed a quaker, within the meaning of the ſaid act, unleſs he produces at the ſub-

diviſion meeting, a certificate under the hands of two or more reputable houſekeepers of the people called quakers, acknowledging him to be one of their perſuaſion. 18 G. 3. *c.* 59. *ſ.* 15.

Craike. 10. The inhabitants of the conſtablery of *Craike*, a parcel of the county of *Durham* ſurrounded by the North Riding of the county of *York*, ſhall ſerve in the militia of the ſaid North Riding. *ſ.* 133.

Maker. 11. The inhabitants of that part of the pariſh of *Maker* that lies in the county of *Cornwall*, ſhall ſerve in the militia of the ſaid county. *ſ.* 134.

Wokingham. 12. The inhabitants of the town and pariſh of *Wokingham*, ſhall ſerve in and be trained and exerciſed with the militia of the county of *Berks*. *ſ.* 135.

Filey. 13. The inhabitants of the townſhip of *Filey*, ſhall ſerve in the militia of the Eaſt Riding of the county of *York*. *ſ.* 136.

Threapwood. 14. The inhabitants of *Threapwood* ſhall ſerve in the militia of the county of *Flint*, and be trained and exerciſed with the militia of the pariſh of *Wrothenbury*. *ſ.* 137.

Stamford Baron. 15. The inhabitants of the pariſh of St. *Martin*, called *Stamford Baron*, in the ſuburbs of the borough and town of *Stamford*, on the ſouth ſide of the waters there, called *Welland*, ſhall ſerve in the militia of the county of *Lincoln*. *ſ.* 38.

XVII. Proceedings where the militia have not been already raiſed.

Advertiſement for accepting commiſſions. 1. By the 2 *G.* 3. *c.* 20. In every county where the militia ſhall not be raiſed, the lieutenant ſhall within one month before the Chriſtmas ſeſſions, and within one month before the midſummer ſeſſions, yearly, cauſe advertiſements to be publiſhed in the London Gazette, and the news-papers of ſuch county, ſignifying the want of officers; and all perſons qualified and willing to ſerve as officers, ſhall at any time return their names and intention to the lieutenant, or in his abſence, to any general quarter ſeſſions for the county in which they purpoſe to ſerve. *ſ.* 20.

Annual meeting to be held. 2. And by the 9 *G.* 3. *c.* 42. The lieutenant together with two deputy lieutenants, or in the abſence of the lieutenant three deputy lieutenants, ſhall hold an annual general meeting on the ſecond Tueſday in *March*; and if no meeting ſhall be on that day, the lieutenant or in his abſence three deputy lieutenants may ſummon

mon a general meeting on any other day, of which ſeven days notice ſhall be given in ſome weekly paper (if any ſuch there be) uſually circulated in ſuch county. *ſ.* 47.

Counties not raiſing their militia, to pay 5l for each man.

3. Where the militia *hqs* been raiſed, his majeſty's lieutenant or three deputy lieutenants ſhall yearly, on or before *Dec.* 25, certify the ſame to the clerk of the peace (according as is herein above directed), which certificate he ſhall deliver to the juſtices at the ſeſſions to be held next after *Dec.* 25, and ſhall then file the ſame among the records. And where no ſuch certificate from his majeſty's lieutenant or three deputy lieutenants ſhall be delivered to the clerk of the peace; he ſhall certify under his hand and ſeal, to the ſeſſions to be held next after *Dec.* 25 in that year, on the day the ſeſſions ſhall be opened, that he has not received from his majeſty's lieutenant or any three deputy lieutenants ſuch certificate; and he ſhall file ſuch his certificate amongſt the records. 9 *G.* 3. *c.* 42. *ſ.* 18, 19.

And the juſtices at the ſaid ſeſſions ſhall raiſe and levy, within ſuch county or place, the ſum of 5l, in lieu of every private militia man, in like manner as the county rate. *ſ.* 20.

Provided, that every perſon duly qualified, who ſhall have ſerved for four years, or ſhall be ſerving, as an officer in any corps of the militia, or who ſhall offer himſelf by writing under his hand to ſerve as an officer, ſhall be exempted from paying any part or ſhare of ſuch rate or aſſeſſment, nor ſhall his lands, whereſoever lying, be charged thereto; and the deficiency thereby occaſioned ſhall be allowed to ſuch county or place, by deducting the ſum which would otherwiſe have been charged on ſuch perſon, from the groſs amount of the ſum or ſums of 5l *per* man herein directed to be raiſed on ſuch county or place. *ſ.* 21.

Provided, that every perſon claiming ſuch exemption ſhall file a certificate of ſuch ſervice or having offered to ſerve, with the clerk of the peace, and ſhall deliver to him a liſt of his tenants and farmers, and of their places of abode; and the clerk of the peace ſhall file the ſame amongſt the records; and when ſuch rate ſhall be ordered to be made, the clerk of the peace ſhall certify to the treaſurer and high conſtables, the names of the perſons having filed ſuch certificates and liſts, and the names of their farmers and tenants; and the treaſurer and high conſtables ſhall tranſmit ſuch certificate and liſt to the petty conſtables where the lands lie, in order that ſuch lands may not be charged to the ſaid rate. *ſ.* 22.

And the lieutenant of the place where ſuch perſon ſhall have ſerved four years or is then ſerving, ſhall grant to him a certificate thereof; and every lieutenant, juſtice, or chief magiſtrate, to whom ſuch perſon ſhall offer himſelf to ſerve, ſhall likewiſe grant him a certificate of the ſame; in order that he may be exempted as aforeſaid. *ſ.* 23.

And the ſaid rate ſhall be levied and kept diſtinct and ſeparate from all the other county rates. *ſ.* 24, 25.

And the tenant may deduct the ſame out of his rent; except where there is a covenant to the contrary, or where the lands are not let at rack rent. *ſ.* 25, 26.

Where a county and a city or a town being a county of itſelf are joined towards raiſing the militia, they ſhall each pay according to their quotas to the land tax; unleſs the number of men ſhall have been apportioned between them, and then they ſhall each pay according to their number of men. *ſ.* 27.

And where a city or town being a county of itſelf doth not contribute to the county rate; their proportion ſhall be levied, in like manner as their poor rate. *ſ.* 28, 29.

Where a town lies in two counties, they ſhall contribute in that county only where the church ſtands; and the deficiency of the rate which the ſaid town would have paid, ſhall be made up by the county in general, and not by the diviſion or hundred where the town is ſituate. *ſ.* 30.

And if ſuch city or town ſhall not before *June* 1 yearly pay their quota to the county treaſurer, the juſtices of the county at their midſummer ſeſſions ſhall iſſue an order to the overſeers of the poor of each reſpective pariſh within ſuch city or town, requiring them to return to the next Michaelmas ſeſſions the ſeveral quotas that each pariſh or place pays to the land tax; and the juſtices at the ſaid Michaelmas ſeſſions ſhall cauſe the ſame to be levied on the goods of the churchwardens or overſeers, who ſhall be reimburſed as for money expended for the relief of the poor. *ſ.* 31.

And the treaſurer, within one calendar month after he ſhall have received the money, ſhall pay the ſame to the receiver general of the land tax; who ſhall, within ten days after the receipt thereof, certify the ſame to the commiſſioners of the treaſury, and ſhall forthwith pay the ſame into the exchequer, to be accounted for yearly to the parliament, and applied as they ſhall direct. *ſ.* 33, 34.

And

And the receiver general for his trouble ſhall be allowed 2d in the pound; treaſurer 1 d; high conſtables 1 d; petty conſtables, churchwardens, and overſeers of the poor 1d. ſ. 37.

And the clerk of the peace ſhall, within 14 days next after Chriſtmas yearly, tranſmit to the commiſſioners of the treaſury, and alſo to the receiver general, a copy ſigned by him of every certificate which ſhall have been delivered in purſuance of this act; and if no ſuch certificate ſhall have been delivered, then he ſhall certify that no ſuch certificate from his majeſty's lieutenant or any three deputy lieutenants hath been received by him, and that he hath certified the ſame to the juſtices of ſuch general quarter ſeſſions, and thereon required ſuch juſtices to proceed according to the directions of this act; and ſhall alſo certify what proceedings have been had at ſuch ſeſſions in relation to the raiſing the ſaid ſum of 5 l *per* man: And if the juſtices at ſuch ſeſſions ſhall not proceed to raiſe the ſame, the clerk of the peace ſhall within 14 days next after the ſaid ſeſſions certify to the ſolicitor of the treaſury ſuch omiſſion, and the names of the juſtices preſent at ſuch ſeſſions: And the ſolicitor of the treaſury ſhall, on receipt of ſuch certificate, forthwith proceed to compel the juſtices to raiſe the ſaid ſum. ſ. 40.

And if the ſaid ſum of 5 l *per* man ſhall not be duly paid into the exchequer; or if any perſon ſhall refuſe o omit to pay his proportion or to perform his duty for raiſing or payment of the ſame; the treaſurer, high conſtable and petty conſtable, or other perſon to whom ſuch default ſhall be made, ſhall within 14 days after ſuch default, certify the ſame in writing ſigned by him, with the reaſon thereof, to the clerk of the peace; and the clerk of the peace ſhall, within 14 days after, certify the ſame to the ſolicitor of the treaſury, on pain of 200 l and forfeiting his office, and being incapacitated to hold any office under the government: And the ſolicitor of the treaſury ſhall, on receipt of ſuch certificate, proceed with all due diligence, to proſecute all juſtices of the peace, receivers general, treaſurers, and other perſons neglecting or omitting their duty, and to raiſe the ſaid ſum of 5 l. *per* man. ſ. 41, 46.

And if the clerk of the peace ſhall refuſe or neglect to receive, deliver, file, make, record or tranſmit ſuch certificates or any of them; he ſhall forfeit 500 l and his office, and be incapacitated: Alſo the ſolicitor of the treaſury neglecting his duty ſhall incur the like forfeiture;

Receiver general or treaſurer neglecting his duty ſhall forfeit 200l; chief conſtable 50l; petty conſtable, and other perſons who ſhall offend in like manner, 20l. All which forfeitures ſhall be to him who ſhall ſue for the ſame in any of his majeſty's courts of record at *Weſtminſter*. *ſ.* 42. 3, 4, 6.

All other penalties and forfeitures by this act not otherwiſe directed, ſhall be recovered on proof upon oath before one juſtice, to be levied by diſtreſs: for want of ſufficient diſtreſs, the offender to be committed to the common goal, for any time not exceeding three months. *ſ.* 45.

A. Form of a precept to the high conſtable for ordering liſts to be returned; with the petty conſtable's warrant thereupon.

Weſtmorland. { To H. C. gentleman, chief conſtable of the Eaſt Ward within the ſaid county.

WE A. D. *and* B. D. *eſquires, deputy lieutenants, and* J. P. *and* K. P. *eſquires, two of his majeſty's juſtices of the peace for the ſaid county, at our general meeting for that purpoſe aſſembled, do hereby require you to iſſue out your warrants to the ſeveral petty conſtables within your ſaid ward, according to the form hereon indorſed. Given under our hands and ſeals the ——— day of ——— in the year ———.*

Form of the ſaid warrant indorſed.

Weſtmorland, Eaſt Ward. } To the conſtable of———

BY *virtue of an order from the deputy lieutenants* [and juſtices of the peace] *in and for the ſaid county at their general meeting for that purpoſe aſſembled, unto me directed, you are hereby required to make out a fair and true liſt in writing of all men uſually and at this time dwelling within your conſtablewick, between the ages of eighteen and forty-five years, diſtinguiſhing therein their ranks and occupations, and which of the ſaid perſons labour under any infirmities incapacitating them from ſerving as militia men; and alſo which of them* (*if any*) *is an officer or private man ſerving in his majeſty's other forces, or a commiſſion officer ſerving or who has ſerved for four years in the militia, or a private man ſerving or who has ſerved in*

the

the militia by himſelf or ſubſtitute for three years or until legally diſcharged, or a member of either of the univerſities, clergyman, licenſed teacher of any ſeparate congregation, conſtable or other peace officer, articled clerk, apprentice, ſeaman or ſeafaring man, or poor man who has three children born in wedlock. Which liſt ſo fairly and truly made as aforeſaid, you are hereby required to return to the deputy lieutenants and juſtices of the peace for the ſaid county at their meeting for that purpoſe to be held on the ——— day of ——— next enſuing the date hereof, at ——— in the ſaid county. And you are hereby further required to affix a true copy of the ſaid liſt ſo to be made out as aforeſaid, on the door of the church or chapel belonging to your reſpective pariſh, townſhip or place; and if ſuch place being extraparochial, hath no church or chapel belonging thereto, then on the door of the church or chapel of ſome pariſh or place thereto adjoining, on ſome ſunday morning which ſhall be three days at the leaſt before the ſaid ——— day of ———. And alſo you are to affix notice in writing at the bottom of the ſaid liſt, of the day and place of the ſaid meeting, and that all perſons who ſhall think themſelves aggrieved may then appeal, and that no appeal will be afterwards received. Herein fail you not. Given under my hand, the ——— day of ——— in the year of our Lord ———.

H. C. chief conſtable of the ſaid ward.

B. Precept to the high conſtable for iſſuing his warrants to the petty conſtables, to give notice of the number appointed to ſerve within each pariſh or place, and of the time and place for balloting.

Weſtmorland. { To H. C. gentleman, chief conſtable of the Weſt Ward within the ſaid county.

WE A. D. and B. D. eſquires, deputy lieutenants, and J. P. and K. P. eſquires, juſtices of the peace in and for the ſaid county, at our ſubdiviſion meeting aſſembled, for proportioning the number of private militia men to ſerve for each pariſh, tithing or place, within the ſaid ward, do hereby require you to give notice to the ſeveral petty conſtables within your ſaid ward, of the number of men appointed by us to ſerve for the ſeveral pariſhes, tithings, or places within their reſpective diſtricts, according to the liſt hereunto annexed; and

that our next ſubdiviſion meeting, for cauſing the ſaid men to be choſen by lot to ſerve in the ſaid militia will be at ——— *in* ——— *in the ſaid county, on the* ——— *day of* ——— *now next enſuing. Given under our hands and ſeals the* ——— *day of* ——— *in the year* ———.

Form of the ſaid warrant indorſed.

Weſtmorlan'p } To the conſtable of ——
Weſt Ward. }

BY *virtue of an order from the deputy lieutenants and juſtices of the peace for the ſaid county, at their ſubdiviſion meeting for that purpoſe aſſembled, you are hereby required to give notice, to the ſeveral perſons within your conſtablewick liable to ſerve in the militia of the ſaid county, that* ——— *men are appointed to ſerve for the ſaid townſhip*;

[Or, if the liſts of two or more townſhips are added together, then ſay, *that* ——— *men are appointed to ſerve jointly for your ſaid townſhip, and for the townſhip of* ——— *in the ſaid ward*]

and that the next ſubdiviſion meeting, for cauſing the ſaid men to be choſen by lot to ſerve in the ſaid militia, will be at ——— *in* ——— *in the ſaid county, on the* ——— *day of* ——— *now next enſuing. Given under my hand the* ——— *day of* ——— *in the year of our Lord* ——.

A. C. chief conſtable of the ſaid ward.

Note; it may be proper in this caſe (though not required by the act), and more eſpecially in caſe of *occaſional diſcharges*, to require the petty conſtables to give notice to the ſeveral perſons within their reſpective diſtricts, liable to be balloted, that they may appear, if they think fit, and ſhew cauſe why ſuch diſcharges ſhould not be made, or ſuch balloting ſhould not be; for they may offer volunteers; or the cauſe aſſigned for ſuch diſcharge may not be true, and it is reaſonable they ſhould have opportunity to diſprove it: And conſequently, the high conſtable's warrant to the petty conſtables may vary accordingly.

Or particular warrants may be iſſued upon particular occaſions. As thus;

Form of a notice to the townſhip to ſhew cauſe againſt a diſcharge.

Weſtmorland. { To the conſtable of ——— in the ſaid county.

BY *virtue of an order from his majeſty's deputy lieutenants and juſtices of the peace in and for the ſaid county, at their ſubdiviſion meeting for putting the laws in execution relating to the militia of the ſaid county, you are hereby required forthwith to give notice to all perſons within your conſtablewick liable to ſerve in the militia, that if any perſon or perſons can ſhew juſt cauſe why* A. M. *now ſerving in the militia for the ſaid conſtablewick ſhould not be diſcharged and another man balloted in his place, they may appear at ——— in the ſaid county, on ——— the ——— day of ——— then and there to make their objections. And you are to appear at the ſame time and place to certify what you ſhall have done in the execution hereof. Given under my hand the ——— day of ——— in the year ———.*

A. C.

Clerk of the ſubdiviſion meetings.

So where the militia is embodied, and a man's ſervice is within four months of expiring; the notice may be,

. . . . that if any perſon can ſhew juſt cauſe why another man ſhould not be balloted to ſerve in the militia of the ſaid county, in the place of A. M. *whoſe time of ſervice is within four months of expiring, he may appear . . . . . .*

C. Precept to the high Conſtable, for iſſuing his warrant to the petty conſtables, to give notice to the perſons choſen by lot, to appear and take the oath and be inrolled; with the petty conſtable's warrant thereupon.

Weſtmorland. { To H. C. gentleman, chief conſtable of the Weſt Ward, within the ſaid county.

WE A. D. *and* B. D. *eſquires, deputy lieutenants, and* J. P. *and* K. P. *eſquires, two of his majeſty's juſtices of the peace, in and for the ſaid county, at our ſubdiviſion*

viſion meeting for that purpoſe aſſembled, do hereby order and require you forthwith to iſſue out your warrants to the ſeveral petty conſtables within your ſaid ward, according to the form hereon indorſed. Given under our hands and ſeals the——— day of ——— in the year of our Lord———.

Form of the ſaid warrant indorſed.

Weſtmorland, West Ward. } To the conſtable of ———

BY *virtue of an order from the deputy lieutenants and juſtices of the peace in and for the ſaid county, at their ſubdiviſion meeting for that purpoſe aſſembled, you are hereby directed and required to give notice to* A. M. *an inhabitant within your conſtablewick, choſen by lot at the ſaid meeting to ſerve in the militia of the ſaid county, that he do appear at the moot-hall in* Appleby *in the ſaid county, on ——— the——— day of———next, then and there to take the oath in that behalf required by law, and to be inrolled to ſerve in the militia of the ſaid county as a private militia man for the ſpace of three years, or otherwiſe to provide a fit perſon (to be approved by the deputy lieutenants and juſtices of the peace that ſhall be then and there preſent) to ſerve as his ſubſtitute, who ſhall take the ſaid oath and be inrolled in manner aforeſaid. Which notice you are to give unto him, or to leave the ſame at his place of abode, at leaſt ſeven days before the ſaid——— day of——— next. And be you then there to certify what you ſhall have done in the premiſſes. Herein fail you not. Given under my hand the ——— day of ——— in the year of our Lord———.*

H. C. chief conſtable of the ſaid ward.

Form of the notice to be left at the dwelling-houſe, where perſonal notice cannot be given.

William Harriſon,

NOTICE *is hereby given unto you, that you are choſen by lot to ſerve in the militia of this county of* W. *and that you are to appear at the moot-hall in* A. *in the ſaid county, on ——— the ——— day of ——— next, before the deputy lieutenants and juſtices of the peace for the ſaid county to be then and there aſſembled, to take the oath in that behalf required, and to be inrolled to ſerve in the militia of the ſaid county as a private militia man for the ſpace of three years, or otherwiſe to provide a fit perſon to be then and there approved by the ſaid*

ſaid deputy lieutenants and juſtices, who ſhall take the ſaid oath, and be then and there inrolled as aforeſaid. Given under my hand the ——— day of ——— in the year of our Lord ——.

A. C. conſtable
of ———.

To prevent miſtakes, it may be beſt to have printed forms, and to deliver the ſame properly filled up to the reſpective conſtables.

D. Form of an information and complaint againſt a militia man not appearing to be ſworn and inrolled.

Weſtmorland. { THE *information and complaint of* A. I. *of* ——— *in the ſaid county, gentleman, made upon oath before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, the* ——— *day of* ——— *in the year of our Lord* ——— *that* A. O. *late of* ——— *in the ſaid county, yeoman, not being one of the people called quakers, hath been duly choſen by lot to ſerve as a private militia man in the militia of the ſaid county, and hath had due notice to appear before the deputy lieutenants and juſtices of the peace in and for the ſaid county, at their ſubdiviſion meeting for that purpoſe aſſembled, to take the oath in that behalf required, and to be inrolled to ſerve in the ſaid militia as a private militia man, or to provide a fit perſon to ſerve as his ſubſtitute; and that the ſaid* A. O. *hath neglected to take the ſaid oath, and to ſerve in the ſaid militia, and hath alſo neglected to provide any fit perſon to ſerve as his ſubſtitute; whereupon he the ſaid* A. I. *prayeth that juſtice may be done againſt him the ſaid* A. O. *for the ſaid offence.*

A. J.

Before me the ſaid juſtice,
J. P.

Summons thereupon.

Weſtmorland. { To the conſtable of ———

WHEREAS *complaint and information upon oath hath been made unto me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, that* A. O. *late of* ——— *in the county aforeſaid, yeoman, (not*

being one of the people called quakers) hath been duly choſen by lot to ſerve as a private militia man in the militia of the ſaid county, and hath had due notice to appear before the deputy lieutenants and juſtices of the peace in and for the ſaid county, at their ſubdiviſion meeting for that purpoſe aſſembled, to take the oath in that behalf required, and to be inrolled to ſerve in the ſaid militia as a private militia man, or to provide a fit perſon to be approved by the ſaid deputy lieutenants and juſtices as aforeſaid to ſerve as his ſubſtitute; and that he the ſaid A. O. *hath neglected* [or *refuſed*] *to take the ſaid oath, and to ſerve in the ſaid militia, and hath alſo neglected to provide any fit perſon to ſerve as his ſubſtitute: Theſe are therefore to require you forthwith to ſummon the ſaid* A. O. *to appear before me at the houſe of —— in —— in the ſaid county, on —— the —— day of —— at the hour of —— in the afternoon of the ſame day, to anſwer unto the ſaid complaint, and to ſhew cauſe why the penalty of ten pounds ſhould not be levied upon his goods and chattels for the ſaid offence. Herein fail you not. Given under my hand and ſeal the —— day of —— in the year of our Lord ——.*

Warrant of diſtreſs for the penalty of 10l.

Weſtmorland. { To the conſtable of ——

WHEREAS A. O. *late of —— in the county of ——, yeoman, (not being one of the people called quakers,) is this day duly convicted upon oath before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, for that he the ſaid* A. O. *having been duly choſen by lot to ſerve as a private militia man in the militia of the ſaid county, and after due notice given unto him to appear before the deputy lieutenants and juſtices of the peace in and for the ſaid county at their ſubdiviſion meeting for that purpoſe aſſembled, to take the oath in that behalf required, and to be inrolled to ſerve in the ſaid militia as a private militia man, or to provide a fit perſon to be approved by the ſaid deputy lieutenants and juſtices as aforeſaid to ſerve as his ſubſtitute, hath neglected to take the ſaid oath, and to ſerve in the ſaid militia, and alſo hath neglected to provide any fit perſon to ſerve as his ſubſtitute; whereby he the ſaid* A. O. *hath forfeited the ſum of ten pounds: Theſe are therefore in his ſaid majeſty's name to command you, to levy the ſaid ſum by diſtreſs of the goods and chattels of him the ſaid* A. O. *And if within the ſpace of* [four] *days next after ſuch diſtreſs by you taken, the ſaid ſum together with reaſonable charges of taking and keeping the ſaid diſtreſs ſhall not*

be paid, that then you do ſell the ſaid goods and chattels ſo by you diſtrained, and out of the money ariſing by ſuch ſale, that you do pay the ſaid ſum of ten pounds to the ſaid deputy lieutenants and juſtices as aforeſaid, or to ſuch perſon as they ſhall appoint to receive the ſame, for the providing of a ſubſtitute to ſerve for him the ſaid A. O. *and for the other purpoſes by law directed for the application thereof; rendering the overplus (if any ſhall be) on demand unto him the ſaid* A. O. *the reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs being firſt deducted. And if ſufficient diſtreſs cannot be found of the goods and chattels of him the ſaid* A. O. *whereon to levy the ſaid ſum of ten pounds, that then you certify the ſame to me together with the return of this precept. Herein fail you not. Given under my hand and ſeal, the ——— day of ——— in the year of our Lord ———.*

Conſtable's return of the want of diſtreſs.

Weſtmorland. A. C. *conſtable of ——— in the ſaid county, maketh oath, before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, the ——— day of ——— in the year ——— that by virtue of my warrant to him directed, to levy the ſum of ——— by diſtreſs and ſale of the goods and chattels of* A. O. *late of ——— aforeſaid in the county aforeſaid, he the ſaid conſtable hath made diligent ſearch for ſuch goods and chattels, and that he doth not know, nor can find, that he the ſaid* A. O. *hath goods and chattles ſufficient to anſwer the ſaid diſtreſs.*

Before me
J. P.

A. C.

Commitment for want of diſtreſs.

Weſtmorland. { To the conſtable of ——— in the ſaid county, and to the keeper of the common gaol at *A.* in the ſaid county.

WHEREAS A. O. *late of ——— in the county aforeſaid, yeoman, (not being one of the people called quakers,) was on the ——— day of ——— duly convicted before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, for that he the ſaid* A. O. *having been duly choſen by lot to ſerve as a private militia man in the militia of the ſaid county, and after due notice given unto him to appear before the deputy lieutenants and juſtices of the peace in and for the ſaid county at their ſubdiviſion meeting for that purpoſe aſſembled, to take the oath in that behalf required and to be inrolled to ſerve in the ſaid militia as a private*

vate militia man, or to provide a fit perſon to be approved by the ſaid deputy lieutenants and juſtices as aforeſaid to ſerve as his ſubſtitute, did neglect to take the ſaid oath, and to ſerve in the ſaid militia, and alſo did neglect to provide any fit perſon to ſerve as his ſubſtitute, and thereupon did forfeit the ſum of ten pounds: And whereas on the ſaid ——— day of ——— in the year aforeſaid, I did iſſue my warrant to the conſtable of ——— to levy the ſaid ſum of ten pounds, by diſtreſs and ſale of the goods and chattels of him the ſaid A. O. *And whereas it duly apppears to me, as well on the oath of the ſaid conſtable, as otherwiſe, that he the ſaid conſtable hath uſed his beſt endeavours to levy the ſaid ſum on the goods and chattels of the ſaid* A. O. *as aforeſaid, and that the goods and chattels of him the ſaid* A. O. *are not ſufficient to anſwer the ſaid diſtreſs: Theſe are therefore to command you the ſaid conſtable of ——— aforeſaid, to apprehend the body of the ſaid* A. O. *and him ſafely to convey to the common gaol at* A. *aforeſaid in the county aforeſaid, and there deliver him to the ſaid keeper thereof, together with this precept. And I do hereby command you the ſaid keeper of the ſaid common gaol, to receive into your cuſtody in the ſame common gaol the ſaid* A. O. *and him there ſafely to keep for the ſpace of* [three months:] *And for ſo doing, this ſhall be your ſufficient warrant. Given under my hand and ſeal, the ——— day of ——— in the year of our Lord ———,*

The foregoing forms of proceſs in this caſe are drawn out at large, not ſolely in contemplation of this particular offence, but as they may be ſome direction in other like caſes for levying of penalties.

N. B. If the militia are embodied; then, inſtead of the ſaid warrant of commitment, the form muſt be varied, in order to have the defaulter apprehended, and thereupon delivered over to the proper officer, as thus:—*Theſe are therefore to command you the ſaid conſtable of ——— aforeſaid, to apprehend the body of the ſaid* A. O. *and to bring him before me or ſome other of his majeſty's juſtices of the peace for the ſaid county, to be further proceeded againſt according to law. Given, &c.*

E. Order

E. Order to pay half the price of a volunteer to a balloted militia man when embodied.

Weſtmorland. { To the churchwardens and overſeers of the poor of the townſhip of ——— in the ſaid county.

WHEREAS A. B. *of your ſaid townſhip, weaver, hath before us* ——— *of his majeſty's deputy lieutenants, and* ——— *of his majeſty's juſtices of the peace for the ſaid county, been choſen by lot to ſerve in the militia of the ſaid county, now embodied and in actual ſervice; and hath been ſworn and inrolled perſonally to ſerve, and hath ſerved therein for the ſpace of one month and upwards, and not been diſapproved of by the commanding officer:* [or, *hath provided* C. D. *his ſubſtitute, who hath been ſworn and inrolled to ſerve, and hath ſerved therein for the ſpace of one month and upwards, and not been diſapproved of by the commanding officer:*] *We do hereby order you to pay to the ſaid* A. B. *the ſum of* ——— *which we adjudge to be half the current price paid for a volunteer within the ſaid county, out of the rate made for volunteers within your ſaid townſhip, and if there be no volunteers provided by you in the ſaid townſhip, then out of a rate to be made after the manner of the poor rate, excepting out of the ſaid rate all balloted perſons who have ſerved for three years by themſelves or ſubſtitutes, or are now ſerving in the ſaid militia. Given under our hands the* ——— *day of* ——— *in the year of our Lord* ———.

F. Order of maintenance of the family of a balloted militia man, when embodied.

Weſtmorland. { To the overſeers of the poor of the townſhip of———in the ſaid county, and to every of them.

WHEREAS *complaint upon oath hath been made unto me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, by* A. M. *now dwelling in your ſaid townſhip, wife of* B. M. *a private militia man ſerving in the militia of the ſaid county in his own right as a balloted man, and in actual ſervice, that ſhe is not able to ſupport herſelf, and* C. *their ſon aged* ——— *years, and* D. *their daughter aged* ——— *years; I do therefore hereby require you to pay unto the ſaid* A. M. *the ſum of* ——— *weekly for the ſupport*

ſupport of her and the ſaid children, being the uſual and ordinary price of ——— days labour in huſbandry within the ſaid county: Or forthwith ſhew cauſe to me to the contrary. Which ſaid weekly ſum ſo to be paid by you as aforeſaid is to be reimburſed to you by the treaſurer of the ſaid county, who is hereby required to reimburſe the ſame accordingly. Given under my hand and ſeal, the ——— day of ——— in the year of our Lord ———.

N. B. This precedent is drawn in ſomewhat a ſummary manner, in order to prevent, if it may be, unneceſſary attendances: for when the militia are embodied, many of the juſtices, being officers, are probably abſent out of the county; and the few that are left muſt needs live remote from ſeveral of the parties concerned.

The courſe to be taken for maintenance of the families of ſubſtitutes, or of volunteers, drawn out into actual ſervice, differeth in nothing from that of other poor perſons according to the poor laws; only with this additional circumſtance, that if the ſubſtitute ſerves for any other pariſh, townſhip, or place than that wherein his family reſides, the maintenance muſt be reimburſed by that pariſh, townſhip, or place for which he ſerves. As thus:

G. Order of maintenance of the family of a ſubſtitute when embodied.

Weſtmorland. } To the overſeers of the poor of the townſhip of —— in the ſaid county, and to every of them.

WHEREAS *complaint upon oath hath been made unto me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, by* A. M. *now dwelling in your ſaid townſhip, wife of* B. M. *a private militia man ſerving in the militia of the ſaid county as a ſubſtitute for* C. M. *of your ſaid townſhip, which militia are now embodied and in actual ſervice, that ſhe the ſaid* A. M. *is not able to ſupport herſelf and* D *her ſon aged —— years; I do therefore hereby require you to pay unto the ſaid* A. M. *the ſum of —— weekly for the ſupport of her and the ſaid* D *her ſon: Or forthwith ſhew cauſe to me to the contrary. Given under my hand and ſeal the —— day of ——— in the year of our Lord* ———.

If

If the ſubſtitute ſerves for another townſhip than that in which his family reſides, then, as that other townſhip muſt finally bear the burden, it ſeems requiſite previouſly to ſummon them to ſhew cauſe; and then the order may run thus:

Weſtmorland. { To the overſeers of the poor of the townſhip of *Burton* in the ſaid county, and to every of them.

WHEREAS *complaint upon oath hath been made unto me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, by* A. M. *now dwelling in your ſaid townſhip, wife of* B. M. *a private militia man ſerving in the militia of the ſaid county as a ſubſtitute for* C. M. *of the townſhip of* Barbon *in the ſaid county, which militia are now embodied and in actual ſervice, that ſhe the ſaid* A. M. *is not able to ſupport herſelf and* D *her ſon aged —— years; and whereas the overſeers of the poor of the ſaid townſhip of* Barbon *aforeſaid have been duly ſummoned by me to ſhew cauſe why relief ſhould not be given to the ſaid* A. M. *but have not ſhewed to me any ſufficient cauſe; I do therefore hereby require you the ſaid overſeers of the poor of the townſhip of* Burton *to pay unto the ſaid* A. M. *the ſum of —— weekly for the ſupport of her and the ſaid* D *her ſon, until you ſhall be otherwiſe ordered to forbear the ſaid allowance. Which ſaid weekly ſum is to be reimburſed to you by the ſaid overſeers of the poor of the townſhip of* Barbon *aforeſaid; who are hereby required to reimburſe the ſame accordingly. Given under my hand and ſeal the —— day of —— in the year of our Lord ——.*

Where the ſubſtitute ſerves for a pariſh in another county, the order may be varied accordingly: as thus,

Weſtmorland. { To the overſeers of the poor of the townſhip of *Burton* in the ſaid county, and to every of them.

WHEREAS *complaint on oath hath been made unto me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county by* A. M. *now dwelling in your ſaid townſhip, wife of* B. M. *a private militia man ſerving in the militia of the county of* Lancaſter, *as a ſubſtitute for* C. M. *of the townſhip of* Warton *in the ſaid county of* Lancaſter, *which militia are now embodied, and in actual ſervice, that ſhe the ſaid* A. M. *is not able to ſupport and*

maintain herſelf; and whereas the overſeers of the poor of the ſaid townſhip of Warton *have been duly ſummoned by me to ſhew cauſe why relief ſhould not be given to the ſaid* A. M. *but have not ſhewed to me any ſufficient cauſe: I do therefore hereby require you the ſaid overſeers of the poor of the townſhip of* Burton, *to pay unto the ſaid* A. M. *the ſum of* —— *weekly for her ſupport and maintenance, until you ſhall be otherwiſe ordered to forbear the ſaid allowance. Which ſaid weekly ſum is to be reimburſed to you by the treaſurer of the ſaid county of* Weſtmorland, *on your producing to him my certificate of this order. Which ſaid treaſurer is required to tranſmit the ſaid certificate, and an account of all monies ſo repaid by him from time to time, quarterly, to the treaſurer of the ſaid county of* Lancaſter. *Which ſaid treaſurer of the county of* Lancaſter *ſhall forthwith reimburſe the ſame to the ſaid treaſurer of the county of* Weſtmorland, *and apply to the juſtices of the peace at the next general or quarter ſeſſion for the county of* Lancaſter, *for their allowance of the ſaid account, and for their order to the overſeers of the poor of the townſhip of* Warton *aforeſaid, to make good the ſame to him the ſaid treaſurer of the county of* Lancaſter *out of their poor rates. Given under my hand and ſeal the* —— *day of* —— *in the year of our Lord* ——.

Form of the juſtice's certificate.

Weſtmorland. I J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, do hereby certify, that this preſent day I have executed an order upon the overſeers of the poor of the townſhip of* Burton *in the ſaid county, to pay weekly the ſum of* —— *for the maintenance of* A. M. *now dwelling in the ſaid townſhip, wife of* B. M. *a private militia man in actual ſervice in the militia of the county of* Lancaſter, *as ſubſtitute for* C. M. *of the townſhip of* Warton *in the ſaid county of* Lancaſter. *Given under my hand and ſeal the* —— *day of* —— *in the year* ——.

H. Warrant

H. Warrant of diſtreſs for quakers ſubſtitutes.

Weſtmorland. { *A. D.* eſquire, deputy lieutenant, and *J. P.* and *K. P.* eſquires, two of his majeſty's juſtices of the peace for the ſaid county; to the high conſtable of Kendal ward within the ſaid county, and to the petty conſtables of ——— in the ſaid county, and to each and every of them.

FORASMUCH *as* A. Q. *late of* ——— *aforeſaid in the county aforeſaid, yeoman, being one of the people called quakers, hath been duly choſen by lot to ſerve in the militia of the ſaid county, and after due notice given unto him hath neglected to appear, and to take the oath in that behalf required, and to ſerve in the ſaid militia, and hath alſo neglected to provide any fit perſon to ſerve for him as his ſubſtitute; and whereas we the ſaid deputy lieutenants and juſtices as aforeſaid have, upon as reaſonable terms as might be, namely for the ſum of* ——— *provided and hired* A. S. *a fit perſon to ſerve in the ſaid militia, as the ſubſtitute of him the ſaid* A. Q. *We do therefore hereby require you to levy the ſaid ſum of* ——— *by diſtreſs and ſale of the goods and chattels of him the ſaid* A. Q. *and to pay the ſame unto* ——— *for the uſe of him the ſaid* A. S. *rendering the overplus (if any ſhall be) unto him the ſaid* A. Q. *after deducting the charges of the ſaid diſtreſs and ſale. Herein fail you not. Given under our hands and ſeals, the* —— *day of* —— *in the year of our Lord.* ——.

Mill.

BY an ancient ordinance, *Haw. ſtat. V.* 1. *p.* 181. The toll of a mill ſhall be taken according to the cuſtom of the land, and according to the ſtrength of the water-courſe, either to the twentieth or four and twentieth corn.

And yet in ſome places the millers do claim and take the ſixteenth part; and where the cuſtom hath been ſo uſed time out of mind, perhaps it may be good and warrantable. *Dalt. c.* 112.

And Mr. *Dalton* ſays, the miller ought to take but one quart for grinding of one buſhel of hard corn, but

if he fetch and carry back the griſt to the owner, he may take two quarts of hard corn; and this hard corn is intended of wheat, rye, meſlin (which is wheat and rye mixed). And for malt, the miller ſhall take but half ſo much toll as he taketh for hard corn, that is, one pint in the buſhel, for that malt is more eaſily ground than wheat or rye: But if the miller do fetch to his mill, and carry back the malt to the owner's houſe, then the miller alſo ſhall have double toll. *Dalt. c.* 112.

But by *Holt* Ch. J. the toll of a mill muſt be regulated by cuſtom; and if the miller takes more than the cuſtom warrants, it is extortion: But if it is a new mill, there the miller is not reſtrained to any certain toll; but the perſons who will have their corn ground there, muſt comply with the miller's demands; and whatſoever he takes, it is not extortion, becauſe it is the voluntary agreement of the parties. *L. Raym.* 149.

In ſome places, the tenants are bound to have their corn ground at the lord's mill. As in the caſe of *Hix* and *Gardener*, *H.* 11 *J.* In an action on the caſe for erecting a mill, the lord declared upon a cuſtom for all the inhabitants to grind at his mill, and that the defendant had built a mill there contrary to the cuſtom, and this was adjudged a good cuſtom: And ſuit to a mill may be by reaſon of tenure or ſervice, and alſo by cuſtom, and ſo may well bind ſtrangers. 2 *Bulſtr.* 195.

And a new erected houſe within the precincts is within the cuſtom of multure: And none may grind elſewhere, but in caſe of exceſſive toll, or that the griſt cannot be ground in convenient time. *Hardr.* 177.

T. 16 *G.* 2. *K.* and *Wood.* The defendant being a miller, was indicted for *changing* corn delivered to him to be ground, and giving bad corn inſtead of it. It was moved to quaſh it, becauſe only a private cheat, and not of a public nature. But it was anſwered, that being a cheat in the way of trade, it concerned the public, and therefore was indictable. And the court was unanimous not to quaſh it. 1 *Seſſ. Caſ.* 217.

Altho' every larceny implies a treſpaſs, and a felonious *taking* of the thing ſtolen; yet it hath been reſolved, that even thoſe who have the poſſeſſion of goods by the delivery of the party, as a miller who hath corn delivered to him to grind may be guilty of felony by taking away any part thereof with an intent to ſteal it. 1 *Haw.* 90.

Millers are not to be common buyers of any corn, to ſell the ſame again, either in corn or meal; but ought only

to

to ſerve for the grinding of corn that ſhall be brought to their mills. *Dalt. c.* 122.

By the 9 *G.* 3. *c.* 29. If any perſon or perſons, unlawfully, riotouſly, and tumultuouſly aſſembled, to the diſturbance of the publick peace, ſhall unlawfully and with force demoliſh or pull down, or begin to demoliſh or pull down, any wind ſaw mill, or other wind mill, or any water mill, or other mill, or any of the works thereto belonging; every ſuch perſon ſhall be guilty of felony without benefit of clergy. And if any perſon ſhall wilfully or maliciouſly burn or ſet fire to any ſuch mill; he ſhall in like manner be guilty of felony without benefit of clergy. Proſecution to be commenced within eighteen months after the offence committed.

Mines deſtroying.

1. BY the 10 *G.* 2. *c.* 32. If any perſon ſhall wilfully and maliciouſly ſet on fire any mine, pit, or delph of coal or cannel coal; he ſhall be guilty of felony without benefit of clergy.

2. And by the 13 *G.* 2. *c.* 21. If any perſon ſhall divert or convey any water into any coal work, with deſign to deſtroy or damage the ſame; he ſhall pay to the party grieved treble damages, with coſts.

3. And by the 9 *G.* 3. *c.* 29. If any perſon ſhall wilfully or maliciouſly ſet fire to, burn, demoliſh, pull down, or otherwiſe deſtroy or damage any fire engine or other engine erected for draining water from collieries or coal mines, or for drawing coals out of the ſame; or for draining water from any mine of lead, tin, copper, or other mineral; or any bridge, waggon way, or trunk, erected for conveying coals from any colliery or coal mine, or ſtaith for depoſiting the ſame; or any bridge or waggon way erected for conveying lead, tin, copper, or other mineral from any ſuch mine; or ſhall cauſe or procure the ſame to be done; he ſhall be guilty of felony, and tranſported for 7 years.

Provided, that no perſon ſhall be proſecuted on this act, unleſs the proſecution be commenced in 18 months after the offence committed.

Miſadventure. See Homicide.

Misdemeanor.

THIS word in its usual acceptation is applied to all those crimes and offences, for which the law has not provided a particular name; and they may be punished according to the degrees of the offence, by fine, or imprisonment, or both. *Barl.*

Misprision of felony. See **Felony**.
Misprision of treason. See **Treason**.
Mittimus. See **Commitment**.
Murder. See **Homicide**.

Mute.

HERETOFORE a person standing mute upon an arraignment of felony (that is, without speaking any thing at all, or without putting himself upon God and the country) was liable to a strange and cruel kind of punishment; the judgment in which case was, that the man or woman should be remanded to the prison, and laid there in some low and dark room, where they should lie naked on the bare earth, without any litter, rushes, or other cloathing, and without any garment about them, but something to cover their privy parts; and that they should lie upon their backs, their heads uncovered and their feet, and one arm to be drawn to one quarter of the room with a cord, and the other arm to another quarter, and in the same manner to be done with their legs; and there should be laid upon their bodies iron and stone, so much as they might bear and more; and the next day following to have three morsels of barley bread without any drink, and the second day to drink thrice of the water next to the house of the prison (except running water) without any bread; and this to be their diet until they were dead. So as, upon the matter, they should die three manner of ways, by weight, by famine, and by cold. And the reason of this terrible judgment was, because they refused to stand to the common law of the land. 2 *Inst.* 178, 179.

And

And this ſome perſons endured, for the ſake of their children or other kindred; becauſe in ſuch caſe they forfeited their goods only, and not their lands; for lands could not be forfeited but by attainder.

But now, by the 12 *G.* 3. *c.* 20. *If any perſon, being arraigned on any indictment or appeal for felony, or on any indictment for piracy, ſhall upon ſuch arraignment ſtand mute, or will not anſwer directly to the felony or piracy, he ſhall be convicted of the offence, and the court ſhall thereupon award judgment and execution, in the ſame manner as if he had been convicted by verdict or confeſſion; and ſuch judgment ſhall have all the ſame conſequences, as a conviction by verdict or confeſſion.*

And the ſame law is, with reſpect to an arraignment for *treaſon* or *petit larceny*; for before this act, perſons ſtanding mute in either of theſe caſes, were to have the like judgment as if they had confeſſed the indictment. 2 *Inſt.* 177. 2 *Haw.* 329.

Naval ſtores. See **Stores.**

Navigable rivers. See **Rivers and Navigation.**

Nets. See **Game.**

News Papers.

BY 11 *G.* *c.* 8. For every journal, mercury, or other public *news paper*, ſhall be paid a ſtamp duty of 1 d a ſheet, and 2 d for every half ſheet. And by 30 *G.* 2. *c.* 19. for every news paper whether on a half ſheet or leſs or more, and not exceeding one ſheet, ½ d more: and d more by the 16 *G.* 3. *c.* 34.

And for every *pamphlet* contained in half a ſheet of paper, ½ d. Larger than half a ſheet, and not exceeding a whole ſheet, for every printed copy thereof, 1 d. Above one ſheet, and not exceeding 6 ſheets in octavo, or a leſſer page not exceeding 12 ſheets in quarto or 20 ſheets in folio, for every ſheet which ſhall be contained in one printed copy thereof, 2 s. 10 *Ann.* *c.* 19. *ſ.* 101.

Provided that nothing herein ſhall charge any act of parliament, proclamation, order of council, form of prayer, or other act of ſtate, printed votes, ſchool books, books of devotion, daily accounts of imports and exports, nor weekly bills of mortality. *ſ.* 102.

And if any perſon ſhall write, print, or expoſe to ſale any ſuch pamphlet or news paper (the ſaid pamphlet exceeding one ſheet only excepted) before the paper ſhall be ſtamped; he ſhall forfeit 10l, with full coſts. *ſ.* 105.

And a printed copy of every pamphlet containing more than one ſheet, ſhall (within the bills of mortality) in ſix days after printing be brought to the head office, and the title, number of ſheets, and duty ſhall be entred in a book, and the duty thereupon paid to the receiver general, who ſhall give a receipt for the ſame on ſuch printed copy, or the ſame ſhall be ſtamped to denote the payment: Without the bills, it ſhall be brought in fourteen days to ſome head collector of the ſtamp duties, who ſhall enter the title, number of ſheets, and duty; which duty ſhall be thereupon paid to the collector, who ſhall give a receipt for the ſame on ſuch printed copy. *ſ.* 111.

And if any ſuch pamphlet containing more than one ſheet, ſhall be printed or publiſhed, and the duty not paid, and title regiſtred, and one copy ſtamped where required ſo to be, within the time above limited; the author, printer, and publiſher, and all other perſons concerned, ſhall loſe all property therein, and in every copy thereof, and ſhall alſo forfeit 20l with full coſts. *ſ.* 112.

And no perſon ſhall expoſe to ſale any ſuch pamphlet, without the name and place of abode of ſome known perſon, by or for whom it was printed or publiſhed, written or printed thereon; on pain of 20l. *ſ.* 113.

And pamphlets unſold ſhall be cancelled by the commiſſioners, and the like number of other ſheets ſtamped gratis ſhall be changed for them. *ſ.* 114.

And two juſtices may hear and determine offences in relation to pamphlets or news papers; and mitigate the penalty, ſo as they do not reduce it lower than one fourth part, over and above the coſts: and where goods of the offender cannot be found, may commit him to priſon till paid. *ſ.* 120.

And by the 16 *G.* 2. *c.* 26. If any perſon ſhall ſell, or expoſe to ſale, any news paper, or any book, pamphlet, or paper, deemed to be a news paper, unſtamped; any juſtice of the peace may commit him (being convicted before him by confeſſion or oath of one witneſs) to the houſe of correction for any time not exceeding three months;

montns: And any perſon may apprehend and carry him before ſuch juſtice; and on producing a certificate of ſuch conviction, under the hand of ſuch juſtice, ſhall have a reward of 20s, to be paid by the receiver general of the ſtamp duties. *ſ.* 5.

And for every *advertiſement* in the gazette, or other printed paper, publiſhed weekly or oftner, ſhall be paid 1s by the 10 *An. c.* 19. and 1s more by the 30 *G.* 2. *c.* 19. and 6d more by the 20 *G.* 3. *c.* 28.

And for every advertiſement contained in or publiſhed with any paper or pamphlet, yearly, monthly, or at any interval of time exceeding one week, 2s, by 30 *G.* 2. *c.* 19: And 6d more, by the 20 *G.* 3. *c.* 28.

But nothing herein ſhall extend to any ſingle advertiſement printed by itſelf.

Night walkers. See **Surety.**
Noblemen. See **Peers.**
Non compos. See **Lunatick.**
Non conformiſts. See **Diſſenters.**

Northern borders.

1. BY the 43 *El. c.* 13. Foraſmuch as many perſons dwelling in *Cumberland*, *Northumberland*, *Weſtmorland*, and *Dureſme*, have been taken by force and kept until ranſomed; and whereas by reaſon of incurſions, burnings, and robberies, ſeveral inhabitants there have been forced to pay a certain rate of money, corn, cattle, or other conſideration, commonly called by the name of *Blackmail*, to divers men of name, friended and allied with divers in thoſe parts, who are known to be great robbers and ſpoil takers in the ſaid counties, to the end thereby to be by them freed, protected, and kept in ſafety; by reaſon whereof many are impoveriſhed, and rapine much increaſed: It is therefore enacted, that whoſoever ſhall without good authority take or detain any ſuch perſons againſt their wills, to ranſom them, or make a prey or ſpoil of their perſons or goods, upon deadly feud, or otherwiſe; or ſhall be aiding therein; or whoſoever ſhall take, receive, or carry any money, corn, cattle, or other conſideration, commonly called Blackmail, for ſuch protection; or ſhall burn any ſtack of

of corn; he ſhall, on conviction at the aſſizes or ſeſſions, be guilty of felony without benefit of clergy, *ſ.* 1, 2.

Foraſmuch as, &c.] At the time when this act was made, and for ſome time after, the peace of the borders was maintained by commiſſioners appointed by the two crowns reſpectively, who agreed upon certain articles to be obſerved by both ſides; appointed guards and watches at certain fords and other places; kept courts; redreſſed grievances; puniſhed offenders; and had power of life and death by way of legal trial in the manner of oyer and terminer. And this act was not made in abolition of ſuch power, but in aid thereof, and for the puniſhment of certain offenders unto whom the commiſſion of the lords wardens of the marches did not extend; which offenders, although not employed in the protection of the country by virtue of the inſtitution of the wardenſhip of the marches, yet demanded contribution of the inhabitants under pretence of preſerving them from rapine and depredation by reaſon of the friendſhip and alliance which they had with the ſpoil-takers and robbers in thoſe parts.

Blackmail] *Maile*, in *French* is a ſmall piece of money; and in the 9 *H.* 5. ſilver halfpence here were termed *mailes*. In a large acceptation, the word *maile* ſignifies a rent in general, paid either in money, corn, cattle, or other goods, as *geeſe maile*, *cow maile*, and the like; and in *Scotland*, *maile* is ſtill the common word for rent. *White maile*, white rents, (vulgarly called quit-rents,) were rents paid in ſilver, and thereby diſtinguiſhed from work day rents, cummin rents, corn rents, and the like. *Black maile*, or black rents, ſeem properly to have been rents paid in cattle (otherwiſe called *neat gelt*, or *neat geld*, from the Daniſh *gelt*, *geld*, *geldum*, a payment of tribute); but more largely taken, it ſeemeth to have been uſed to ſignify all rents not paid in ſilver, in contradiſtinction to the *reddituſ albi*, blanch farms, or white rents.

Deadly feud] *Feud* in the *German* ſignifies enmity, or war; as in like manner the word *foe* ſignifies any enemy. *Feud* in *Scotland*, is a combination of kindred to revenge injuries or affronts done or offered to any of their blood. *Deadly feud* is a profeſſion of irreconcileable hatred, till a perſon is revenged even by the death of his adverſary.

And, by the ſaid ſtatute, perſons outlawed in any of the ſaid counties for any ſuch murder, robberies, burglaries, or other felonies, ſhall in two months be certified in writing by

by the clerk of the peace to all the ſheriffs of all the ſaid counties; and the ſaid ſheriffs ſhall proclaim them in *Carliſle*, *Penreth*, *Cockermouth*, *Appleby*, *Kendal*, *Newcaſtle*, *Morpeth*, *Alnewick*, *Hexam*, *Dureſme*, *Darlington*, *Biſhop Awckland*, *Barnard caſtle*, and *Berwick*, and once a month in every their county courts, till they ſurrender; and the mayors ſhall proclaim them in every fair, and every ſix weeks in the market; and perſons relieving, or conferring with them, ſhall, on the like conviction, be impriſoned for ſix months, and bound to the good behaviour for a year. *ſ.* 3, 4, 5, 6.

Moſs troopers.

2. The juſtices of *Northumberland* and *Cumberland*, may make order in ſeſſions, for charging the reſpective counties, for ſecuring the ſame againſt the moſs-troopers (that is, thieves and robbers, who after having committed offences in the borders, do eſcape through the waſtes and moſſes); ſo as *Northumberland* be not charged above 500l nor *Cumberland* above 200l a year. And they may appoint a commander, with 30 men in *Northumberland*, and 12 men in *Cumberland*, to ſearch for, purſue, and apprehend offenders. 13 & 14 *C.* 2. *c.* 22.

And the perſons ſo employed ſhall be choſen in ſeſſions yearly, or every two years at the fartheſt. 29 & 30 *C.* 2. *c.* 2.

And the ſeſſions ſhall take ſecurity of the perſons by them employed for preſervation of the borders, to anſwer the damages ſuſtained by their neglect or default, and to pay the ſame in four months after proof made thereof in ſeſſions by oath of one witneſs; ſo as the goods ſtolen be entred in one of the books to be kept for that purpoſe, in 48 hours after they be ſtolen or gone; and books ſhall be kept for that end in every market town in the ſaid counties, and in ſuch other places, and by ſuch perſons, as the ſeſſions ſhall appoint. 29 & 30 *C.* 2. *c.* 2.

And by the 18 *C.* 2. *c.* 3. Great and notorious thieves and ſpoil takers, in the ſaid counties of *Northumberland* and *Cumberland*, ſhall ſuffer death as felons without benefit of clergy; or may be tranſported by order of the judges of aſſize, during life.

Offenders eſcaping out of one kingdom into the other.

3. By the 13 *G.* 3. *c.* 31. If any perſon againſt whom a warrant ſhall be iſſued by any juſtice in *England*, for any offence againſt the laws of *England*, ſhall eſcape or go into *Scotland*; the ſheriff, or ſteward depute, or ſubſtitute, or any juſtice of the county or place where ſuch perſon ſhall be, may indorſe his name on the ſaid warrant: which warrant, ſo indorſed, ſhall be a ſufficient authority to the perſon bringing ſuch warrant, and to all perſons

perſons to whom it was originally directed, and alſo to all ſheriffs officers, ſtewards officers, conſtables, and other peace officers where ſuch warrant ſhall be ſo indorſed, to execute the ſame in the county or place where it is ſo indorſed, by apprehending the perſon againſt whom ſuch warrant is granted, and to convey him into the county or place in *England* (being adjacent to *Scotland*) in which the offence was committed, before a juſtice of ſuch county or place, to be there dealt with according to law: Or, in caſe the offence was committed in the county not next adjacent to *Scotland*, then to convey him into any county of *England* adjacent to *Scotland*, before a juſtice there; who ſhall proceed, with regard to ſuch perſon, by indorſing the warrant, as by the 24 *G.* 2. *c.* 55. in like manner as if the perſon had been apprehended in the ſaid county. *ſ.* 1.

And if any perſon, againſt whom a warrant ſhall be iſſued by the lord juſtice general, lord juſtice clerk, or any of the lords commiſſioners of juſticiary, or by any ſheriff, or ſteward depute, or ſubſtitute, or juſtice of the peace of *Scotland*, for any offence againſt the laws of *Scotland*, ſhall eſcape or go into *England*, any juſtice of the county or place where ſuch perſon ſhall be, may indorſe his name on the ſaid warrant: Which warrant, ſo indorſed, ſhall be a ſufficient authority to the perſon bringing ſuch warrant, and to all perſons to whom it was originally directed, and alſo to all conſtables or other peace officers where ſuch warrant ſhall be ſo indorſed, to execute the ſame in the county or place where it is ſo indorſed, by apprehending the perſon againſt whom ſuch warrant is granted, and to convey him into the county or place in *Scotland* (being adjacent to *England*) where the offence was committed, before the ſheriff or ſteward depute, or ſubſtitute, or a juſtice of ſuch county or place, to be there dealt with according to law: Or, in caſe the offence was committed in a county not next adjacent to *England*, then to convey him into any county of *Scotland* adjacent to *England*, before the ſheriff, or ſteward depute, or ſubſtitute, or a juſtice there; who ſhall proceed, with regard to ſuch perſon, according to the rules and practice of the law of *Scotland*, in like manner as if he had been apprehended in the ſaid county. *ſ.* 2.

And the expence of removing priſoners as aforeſaid ſhall be repaid to the perſon defraying the ſame, by the treaſurer of the county in England, or by the ſheriff, or ſteward depute, or ſubſtitute, of the county in Scotland, in which the offence was committed; the amount of ſuch expence

expence being previouſly aſcertained upon oath before two juſtices of ſuch county, and allowed and ſigned by them. *ſ.* 3.

And if any perſon, having felonioufly taken money, cattle, goods, or other effects, in either part of the united kingdom, ſhall afterwards have the ſame or any part thereof in his poſſeſſion in the other part of the united kingdom; it ſhall be lawful to indict, try, and puniſh him for theft or larceny in that part of the united kingdom, where he ſhall ſo have ſuch money, cattle, goods, or other effects in his poſſeſſion, as if the ſame had been ſtolen there. *ſ.* 4.

And if any perſon, in either part of the united kingdom, ſhall knowingly *receive* or have any money, cattle, goods, or other effects, ſtolen or otherwiſe feloniouſly taken in the other part of the united kingdom; he ſhall be liable to be indicted, tried, and puniſhed for the ſame, in that part of the united kingdom where he ſhall ſo receive or have the ſame, as if they had been originally ſtolen there. *ſ.* 5.

Nuſance.

I. What it is.

II. How it may be removed.

III. How puniſhed.

I. What it is.

A Common nuſance ſeems to be, an offence againſt the publick, either by doing a thing which tends to the annoyance of all the king's ſubjects, or by neglecting to do a thing which the common good requires. 1 *Haw.* 197.

Annoyances to the prejudice of particular perſons, are not puniſhable by a public proſecution as common nuſances, but are left to be redreſſed by the private actions of the parties aggrieved by them. 1 *Haw.* 197.

Where note a diverſity between a *private* and a *publick* nuſance: If it is a *private* nuſance, he ſhall have his action upon his caſe, and recover his damages; but if it is a *publick* nuſance, he ſhall not have an action upon his caſe, and this the law hath provided for avoiding of multiplicity

tiplicity of ſuits, for if any one might have an action, all men might have the like; but the law for this common nuſance hath provided an apt remedy, by preſentment or indictment at the ſuit of the king, in the behalf of all his ſubjects; unleſs any man hath a particular damage, as if he and his horſe fall into a ditch made acroſs a highway, whereby he received hurt and loſs, there for his ſpecial damage which is not common to others, he ſhall have an action upon his caſe. 1 *Inſt.* 56.

And from hence it clearly follows, that no indictment for a nuſance can be good, which lays it to the damage of private perſons only: as where it accuſes a man of ſurcharging ſuch a common; or of incloſing ſuch a piece of ground, wherein the inhabitants of ſuch a town have a right of common, to the nuſance of all the inhabitants of ſuch a town; or of diſturbing a watercourſe running to ſuch a mill, to the damage of ſuch a perſon and his tenants, without ſaying *of all the liege ſubjects of the king.* 1 Haw. 197.

Yet it hath been ſaid, that an indictment of a *common ſcold* is good, although it conclude to the common nuſance of *divers*, inſtead of *all*, the king's ſubjects; perhaps for this reaſon (ſays Mr. *Hawkins*) becauſe a common ſcold cannot but be a common nuſance. 1 *Haw.* 198.

And if the law be ſo in this caſe, why ſhould not an indictment ſetting forth a nuſance to a way, and expreſsly and unexceptionably ſhewing it to be a highway, be good, notwithſtanding it conclude to the nuſance of *divers*, without ſaying *all* the king's ſubjects? And perhaps the authorities which ſeem to contradict this opinion, might go upon this reaſon, that in the body of the indictment, it did not appear with ſufficient certainty, whether the way, wherein the nuſance was alledged, were a highway, or only a private way; and therefore that it ſhall be intended from the concluſion of the indictment, that it was a private way. 1 *Haw.* 198.

There is no doubt but that common *bawdy houſes* are indictable as common nuſances; and it hath been ſaid, that all common *ſtages for rope dancers*, and alſo all common *gaming houſes*, are nuſances in the eye of the law, not only becauſe they are great temptations to idleneſs, but alſo becauſe they are apt to draw great numbers of diſorderly perſons. 1 *Haw.* 198.

Alſo it hath been holden, that a common *play houſe* may be a nuſance, if it draw together ſuch a number of coaches or people, as prove generally inconvenient to the places adjacent. 1 *Haw.* 198.

Stopping

Stopping a *proſpect* is not a common nuſance. 3 *Salk.* 247.

Erecting a ſhed ſo near a man's houſe, that it ſtops up his *lights*, is not a nuſance for which an action will lie; unleſs the houſe is an ancient houſe, and the lights ancient lights. 2 *Salk.* 459.

So if two men be owners of two parcels of land adjoining, and one of them doth build an houſe upon his land, and makes windows and lights looking into the other's land, and this houſe and the lights have continued by the ſpace of 30 or 40 years; yet the other may, upon his own land and ſoil, lawfully erect an houſe or other thing, againſt the ſaid lights and windows, and the other can have no action; for it was his folly to build his houſe ſo near to the other's land. But if the former hath continued for time immemorial, it is otherwiſe. *Cro. Eliz.* 118.

A *gate* erected in a highway, where none had been before, is a common nuſance. 1 *Haw.* 199.

It hath been holden, that it is no common nuſance to *make candles* in a town becauſe the needfulneſs of them ſhall diſpenſe with the noiſomneſs of the ſmell; but the reaſonableneſs of this opinion ſeems juſtly to be queſtionable, becauſe whatever neceſſity there may be that candles be made, it cannot be pretended to be neceſſary to make them in a town: And ſurely the trade of a *brewer* is as neceſſary as that of a chandler; and yet it ſeems to be agreed, that a brewhouſe erected in ſuch an inconvenient place, wherein the buſineſs cannot be carried on without greatly incommoding the neighbourhood, may be indicted as a common nuſance: And ſo in like caſe may a *glaſs houſe*, or a *ſwine yard*. 1 Haw. 199.

Two perſons were indicted for making great quantities of *noiſome*, *offenſive*, and *ſtinking liquors*, called acid ſpirit of ſulphur, oil of vitriol, and oil of aqua fortis; whereby the air was impregnated with noiſome and offenſive ſmells: And it was held by the court to be a nuſance. The word *noiſome* comes in the place of the Latin *nocivus*; and means not only diſagreeable, but hurtful. And lord *Manſfield* ſaid, it is not neceſſary, to conſtitute the offence, that the ſmell ſhould be *unwholeſome*; it is enough, if it renders the enjoyment of life and property *uncomfortable*. *Burrow. Manſfield.* 333. *Rex* v. *White* and *Ward*. *E.* 30 *G.* 2.

A perſon was indicted for making great noiſes in the night with a *ſpeaking trumpet*, to the diſturbance of the

neighbourhood; and it was held by the court to be a nuſance. *T.* 12 *G. K.* and *Smith.* Str. 704.

But it hath been reſolved, that neither an old, nor a new *dove-cote* is a common nuſance; but perhaps if a tenant hath erected one without licence of the lord of the manor, the lord may have an action on his caſe againſt him. 1 *Haw.* 198.

A *monſter* ſhewn for money is a miſdemeanor. 2 *Cha. Ca.* 110. *T.* 34 *C.* 2. *Harring* and *Walrond.* It was a monſtrous child, that died, and was embalmed to be kept for ſhew; but was ordered by the lord chancellor to be buried.

If a man has a *dog* that kills ſheep, that is not a publick nuſance, but the owner of the dog (knowing thereof) is liable to an action; but if he is ignorant of ſuch quality, he ſhall not be puniſhed for this killing: And in an action upon the caſe for ſuch killing, the plaintiff ſhall be required to prove in evidence, that the dog had uſed to kill ſheep. *Dyer.* 25. *Het.* 171.

If a man has an unruly *horſe* in his ſtable, and leaves open the ſtable door, whereby the horſe gets forth and doth miſchief, an action lies againſt the maſter. 1 *Vent.* 295.

In the caſe of *Buxendin* and *Sharp*, *E.* 8 *W.* The plaintiff declared, that the defendant kept a *bull*, that uſed to run at men, but did not ſay that the defendant knew of this quality; it was adjudged, that an action did not lie, unleſs it did appear that the maſter knew of this quality. 2 *Salk.* 662.

There is a difference between beaſts that are *feræ naturæ*, as lions and tygers, which a man muſt always keep up at his peril; and beaſts that are *manſuetæ naturæ*, and break through the tameneſs of their nature, ſuch as oxen and horſes. In the latter caſe, an action lies, if the owner has had notice of the quality of the beaſt; but in the former caſe, an action lies without ſuch notice. Ld. *Raym.* 1583.

But after ſuch wild beaſts have eſcaped from their keeper, ſo as to regain their natural liberty; in ſuch caſe, he that kept them before, ſhall not anſwer for the damage they ſhall commit after he hath loſt them, and they have reſumed their wild nature. 1 *Ventr.* 295.

A *maſtiff*, going in the ſtreet unmuzzled, from the ferocity of his nature being dangerous and cauſe of terror to his majeſty's ſubjects, ſeemeth to be a common nuſance, and conſequently the owner may be indicted for ſuffering him to go at large.

II. How it may be removed.

It ſeemeth to be certain, that any one may pull down or otherwiſe deſtroy a common nuſance, as a new gate, or even a new houſe erected in a highway, or the like: for if one whoſe eſtate is or may be prejudiced by a *private* nuſance actually erected, as a houſe hanging over his ground, or ſtopping his lights, may juſtify the entring into another's ground and pulling down and deſtroying ſuch a nuſance, whether it were erected before or ſince he came to the eſtate, it cannot but follow *a fortiori*, that any one may lawfully deſtroy a *common* nuſance: And as the law is now holden, it ſeems that in a plea, juſtifying the removal of the nuſance, a man need not ſhew that he did as little damage as might be. 1 *Haw.* 199.

But although he may remove the nuſance, yet he cannot remove the materials, or convert them to his own uſe. *Dalt. c.* 50.

III. How puniſhed.

It is ſaid, that a common ſcold is puniſhable (after conviction, upon indictment) by being placed in a certain engine of correction called the trebucket or cucking ſtool. 1 *Haw.* 200.

Note; *cuck* or *guck* in the *Saxon* tongue (according to lord *Coke*) ſignifieth to ſcold or brawl; taken from the bird *cuckow* or *guckhaw*: and *ing* in that language ſignifieth water; becauſe a ſcolding woman was for her puniſhment ſowſed in the water. 3 *Inſt.* 219. The common people in the northern parts of *England*, amongſt whom the greateſt remains of the ancient *Saxon* are to be found, pronounce it *ducking ſtool*; which perhaps may have ſprung from the *Belgick* or *Teutonick ducken*, to dive under water; from whence alſo probably we denominate our *duck* the water fowl: or rather, it is more agreeable to the analogy and progreſſion of languages, to aſſert, that the ſubſtantive *duck* is the original, and the verb made from thence; as much as to ſay, that to *duck* is to do as that fowl does.

And ſhe may be convicted, without ſetting forth the particulars in the indictment. 2 *Haw.* 227.

Nevertheleſs, the offence muſt be ſet forth with convenient certainty; and the indictment muſt conclude not only *againſt the peace*, but *to the common nuſance of divers of his majeſty's liege ſubjects*. And in the caſe of *K.* and

Margaret Cooper, *H.* 19 *G.* 2. She was convicted on an indictment, for being *a common and turbulent brawler, and ſower of diſcord amongſt her quiet and honeſt neighbours, ſo that ſhe hath ſtirred, moved, and incited divers ſtrifes, controverſies, quarrels, and diſputes, amongſt his majeſty's liege people, againſt the peace*, &c. It was moved in arreſt of judgment, that the charge was too general, and did not amount to being either a barrator or common ſcold, which are the only inſtances in which a general charge will be ſufficient. It was likewiſe objected, that if the words did amount to a deſcription of a ſcold, yet it ſhould be laid to be to the common nuſance of her neighbours, for every degree of ſcolding is not indictable. And the court was of opinion, that the judgment ought to be arreſted on both exceptions; for none of the words here uſed are the technical words; and it muſt be laid to be to the common nuſance. *Str.* 1246.*

There is no doubt, but that whoever is convicted of another nuſance, may be fined and impriſoned; and it is ſaid, that one convicted of a nuſance done to the king's highway, may be commanded by the judgment to remove the nuſance at his own coſts: and it ſeemeth to be reaſonable, that thoſe who are convicted of any other common nuſance, ſhould alſo have the like judgment. 1 *Haw.* 200. *Str.* 886.

And the defendant ſhall not be allowed to make any objections againſt the indictment, until he hath pleaded to it. *Dalt. c.* 66.

And the court never admits a perſon convicted of a nuſance, to a ſmall fine, until proof is made of the nuſance being removed. *Dalt. c.* 66.

A maſter is indictable for a nuſance done by his ſervant. Ld. *Raym.* 264.

All common nuſances are indictable not only at the ſeſſions, but alſo in the torn and leet. 2 *Haw.* 67.

An act of general pardon only diſcharges the fine, but not the abatement of the nuſance. 2 *Salk.* 458.

There are many offences by particular ſtatutes declared to be common nuſances, which are treated of under their reſpective titles.

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* It ſeemeth to ſavour not much of gallantry that our anceſtors ſuppoſed none but women could be guilty of this offence; for the technical words denoting the ſame, whilſt the proceedings were in latin, were all of the feminine gender; as *rixatrix, calumniatrix, communis pugnatrix, communis pacis pertubatrix*, and the like.

General

General indictment for a nuſance.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of* ——— *in the county of* ——— *yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *and on divers other days and times, as well before as afterwards, with force and arms at* ——— *in the ſaid county,* [here ſet forth the nuſance;] *and the ſame* (nuſance) *ſo as aforeſaid done, doth yet continue and ſuffer to remain; to the common nuſance of all the lieges and ſubjects of our ſaid lord the king, to the evil example of all others in the like caſe offending, and againſt the peace of our ſaid lord the king, his crown and dignity.*

Oaths.

I. Of oaths in general.

II. The common forms of oaths.

III. Quakers oaths.

IV. Oaths of infidels.

I. Of oaths in general.

Oath. 1. OATH is a corruption of the *Saxon* word *eoth.* 3 Inſt. 165.

Corporal oath. 2. It is called a corporal oath, becauſe the perſon lays his hand upon ſome part of the ſcriptures when he takes it. 3 *Inſt.* 165.

Oath taken on the common prayer book. 3. If the oath be taken on the common prayer book, which hath the epiſtles and goſpels, it is good enough, and perjury upon the ſtatute may be aſſigned upon this oath. 2 *Keb.* 314.

So help me God. 4. The words, *So help me God*, in the common form of an oath, perhaps may have been firſt uſed in the very ancient manner of trial by battel in this kingdom, or at leaſt are delivered with a peculiar emphaſis in that ſolemnity; wherein the appellee lays his right hand on the book, and with his left hand takes the appellant by the right, and ſwears to this effect, *Hear this, thou who calleſt thyſelf* John *by the name of baptiſm, whom I hold by the hand, that falſly upon me thou haſt lied; and for this thou lieſt, that I who call myſelf* Thomas *by the name of baptiſm, did not felonioufly murder thy father* W. *by name* ———*So help*

me God;——(and then he kiſſes the book and ſays) *and this I will defend againſt thee by my body, as this court ſhall award.* And ſo the appellant is ſworn in like manner.

[Where we may obſerve alſo the genuine foundation, as it ſeemeth, of the word *lie* being eſteemed ſtill ſo great an affront above all others, as whenever it is pronounced, to cauſe an immediate affray and bloodſhed.]

Power of adminiſtring an oath.

5. There hath been much doubt, how far juſtices of the peace have power to adminiſter an oath. The ſtatute of the 15 *G.* 3. *c.* 39. hath in one inſtance aſcertained and declared their power; by which it is enacted as follows: *Whereas it is frequently neceſſary for juſtices of the peace to adminiſter oaths, where* penalties *are to be levied or* diſtreſſes *to be made, in purſuance of acts of parliament, which they have no power to adminiſter, unleſs authorized ſo to do by ſuch acts reſpectively; it is therefore enacted, that in all caſes, where any* penalty *is directed to be levied, or* diſtreſs *to be made, by any act of parliament now in force, or hereafter to be made, it ſhall be lawful for any juſtice or juſtices, acting under the authority of ſuch acts reſpectively, to adminiſter an oath or oaths for the purpoſe of levying ſuch* penalties *or making ſuch* diſtreſſes.

But except in the particular inſtances here ſpecified, the matter remains as doubtful as it was before, or perhaps more doubtful, as it may induce an inquiry into other branches of the office of a juſtice of the peace, which poſſibly may be liable to the ſame objection.

And there ſeems to be ſome ambiguity upon the face of the act itſelf. For there are three different forms of expreſſion in acts of parliament giving power to juſtices to levy penalties and make diſtreſſes: One is, where an act ſays generally, that ſuch an offence ſhall be heard and determined by one or more juſtices, without expreſſing the particular mode of conviction: The ſecond is, where an act ſays, that the conviction ſhall be upon the oath of one or more witneſs or witneſſes: And the third is, where the act goes further and ſays—*which oath ſuch juſtice is hereby empowered to adminiſter.*

If it is the laſt of theſe only that the act refers to, it is certain there are numberleſs inſtances where convictions are required by acts of parliament to be made on the oaths of witneſſes, which acts give no expreſs power to the juſtices to adminiſter ſuch oaths; and if upon the ſaid acts no oath, before this remedial act, could be adminiſtred, they muſt neceſſarily be underſtood as having

been hitherto nugatory, and the convictions thereupon merely void. The famous game act of the 5 *Ann. c.* 14. and many other game acts conſequent thereupon, require the conviction to be upon oath, but do not expreſsly authorize the juſtices to adminiſter the ſaid oath. So alſo, many penalties relating to the poor; to the woollen, linen, fuſtian, cotton, leather, iron, and other manufactures; to the wages of ſervants, labourers, and artificers; and even on the late dog act, where the penalties are very large; and on a yet later act, 13 *G.* 3. *c.* 63. relating to the ſilk manufacture, where ſome of the penalties are not leſs than 50 l,—are directed to be recovered by the oaths of witneſſes, and yet the juſtices are not impowered by any of the acts reſpectively to adminiſter the ſaid oaths.

But be this as it may, it is evident that this remedial act doth not extend to any caſe where an oath is not mentioned in the act, but where only a general power is given to the juſtices to take cognizance: and it may be argued, that if where an oath is neceſſary, yet the juſtices cannot proceed, unleſs authorized by the ſeveral acts reſpectively to adminſter ſuch oath, it follows *a fortiori*, that where no oath is mentioned, there no oath can be by them adminiſtred. And this is the caſe of all the ancient ſtatutes, ſo far down as the latter end of the reign of queen Elizabeth. For they only expreſs in general, that the juſtices ſhall have power to *hear and determine* ——ſhall *inquire* of ſuch and ſuch offences——ſhall *inquire, hear, and determine, by their diſcretions*——ſhall *convict offenders by witneſs, confeſſion, or otherwiſe*. The ſtatute of the 43 *El. c.* 7. againſt hedge breaking and robbing of orchards, is the firſt ſtatute that ſpecially requires the conviction to be upon oath: And in many ſubſequent ſtatutes, it is only expreſſed that the conviction ſhall be before the juſtices, without any mention of an oath at all.

Beſides, there are many other acts to be done by juſtices of the peace, which have no relation to levying of penalties or making diſtreſſes: And it may be argued from analogy, that if they have not power to adminiſter an oath in one caſe, they have not power to adminiſter it in another under the like circumſtances. As for inſtance: Sometimes the penalty, after conviction, is not pecuniary, to be levied by diſtreſs, but corporal, by commitment to the houſe of correction, or otherwiſe; and yet the acts, authorizing and directing the proceedings, run in the very ſame ſtyle and form of words, only this act of

the 15 G. 3. c. 39. heals the defect in one caſe, but leaves the matter open as to the reſt, and unleſs the circumſtances can be diſtinguiſhed, may affect the office of a juſtice of the peace in a moſt eſſential and vital part; for to convict, and in conſequence thereof to impriſon an offender, without oath, or (which is the ſame thing) by virtue of an oath which the juſtice hath no power to adminiſter, argues a very feeble and imperfect juriſdiction, and ſuch as no one, without being well adviſed, would readily chuſe to exerciſe.

Indeed, very few of the oaths adminiſtred by juſtices of the peace have the aforeſaid ſanction of a ſpecial authority given by the ſeveral acts to ſupport them. No act of parliament gives a ſpecial power to adminiſter the oath of office to a gager in the exciſe, a commiſſioner of ſewers, or a ſheriff's bailiff; to a ſoldier inliſted in his majeſty's forces; to an out-penſioner of Chelſea hoſpital, in order to receive his penſion; to a pauper wanting relief; to a perſon apprehended as a rogue and vagabond; to a landlord on the tenant's conveying away his goods clandeſtinely; to a perſon robbed, in order to bring his action againſt the hundred: All theſe, and many other ſuch like, are directed to be adminiſtred by the reſpective acts of parliament, which acts nevertheleſs have no clauſe authorizing the juſtices to adminiſter the ſaid oaths. Nay, further than this, in matters of daily practice, ſo far from an additional clauſe authorizing the adminiſtring of an oath, there is no act of parliament now exiſting, that requires the juſtices to take any examination upon oath, either on the removal of a pauper to his ſettlement, or the filiation of a baſtard child before the two next juſtices. So that the oaths, which upon thoſe occaſions are adminiſtred, are only of congruity, as ſuppoſed incident to, and neceſſarily annexed to the office of a juſtice of the peace; and if they cannot be ſupported upon that foundation, it is eaſy to conjecture what muſt be the conſequence.

It may be worth while, in a few words to conſider, what hath been advanced by learned men upon this ſubject. It hath been urged, that the very act of parliament which gives power to the juſtices to hear and determine, and the commiſſion of the peace conſequent thereupon, do, without more, give to the juſtices every thing neceſſary for the execution of that power; according to that ſaying of lord Coke upon another occaſion, that when the law granteth any thing, that alſo is granted, without which the thing itſelf cannot be. And ſo it ſeems to

have been underſtood for upwards of two hundred years; for from the firſt inſtitution of the office, to the latter end of the reign of queen Elizabeth (as I obſerved before), the ſpecial mode of conviction by oath is never mentioned. But then it is to be remarked, that during all that period, the juſtices were conſidered as acting in their ſeſſions, by a jury; in like manner and form of proceeding, as in other the king's courts of record. And it was not until ſmaller matters, ſuch as hedge breaking, ſervants wages, frequenting alehouſes, and ſuch like, were brought under the juriſdiction of juſtices of the peace, that the adminiſtring of an oath became ſpecially directed. Theſe leſſer matters were thought too trifling to bring the country together about them; and therefore it was ordained, that they ſhall be heard and determined by one or more juſtices out of ſeſſions, and without a jury. And hereby a new kind of judicature being eſtabliſhed, it became neceſſary to limit and define the particular mode of proceeding; as that the juſtice ſhould have power to convict by *confeſſion of the party*, by *view of the juſtice*, or by *examination of witneſſes*, which examination at that time, no doubt, was underſtood to be upon oath, for they knew of no other judicial examination. But for the greater preciſion, and to prevent any ſhadow of ambiguity, very many ſtatutes giving this ſummary juriſdiction in particular caſes, where an oath is required, have this additional clauſe—*which oath ſuch juſtice is hereby impowered to adminiſter*. Nevertheleſs, there are ſo many ſtatutes of the like kind which do not obſerve this diſtinction, and others which never mention any oath at all, that it ſeemeth difficult upon theſe premiſſes to form any general concluſion. What hath been principally intended ſeems to have been, to ſpecify that the conviction in ſuch caſes ſhall be in a ſummary manner without the help of a jury, and conſequently that the juſtice in that reſpect is conſtituted in the place both of judge and jury, and as ſuch muſt proceed after the courſe of the common law, when not directed otherwiſe by ſpecial words in the act of parliament.

On the other hand, the authority of lord Coke is alledged in this matter againſt ſuch general power; who, in treating of the oath of office to be taken, in purſuance of the ſtatute of the 13 *Ed.* 1. *ſt.* 1. *c.* 47. by the conſervators of the Humber, Ouſe, Trent, and other rivers, in relation to the taking of ſalmon, ſays, a new oath cannot be impoſed upon any judge, commiſſioner, or any other ſubject, without authority of parliament, as here it

was; but the giving of every oath muſt be warranted by act of parliament, or by the common law time out of mind. 2 *Inſt.* 479.—But this doth not contradict the former poſition, but rather confirms it, admitting the common law as a rule for the giving of oaths.

The act of parliament of the 1 & 2 *P. & M. c.* 13, impowering the juſtices out of ſeſſions to take bail of perſons arreſted for felony, preſcribes that the juſtices ſhall *take the examination of the priſoner, and the information of them that bring him*, but doth not expreſs that the information ſhall be upon oath. Upon which, Mr Lambard obſerves as follows: Becauſe (ſays he) ſome juſtices do uſe to take this information of the bringers upon their oaths, and ſome others do receive it without any oath at all, let us ſee what is wont to be ſaid on either ſide, that every man may the better underſtand what way to incline and follow. They which take this information without any oath ſay, that if the makers of this ſtatute had meant that an oath ſhould be taken, then would they have expreſſed ſo much; even as the ſtatutes for bankrupts, 34 *H.* 8. *c.* 4. and 13 *El. c.* 7. the ſtatute of accountants, 5 *R.* 2. *c.* 13. the ſtatute of labourers, 2 *H.* 5. *c.* 4. and the ſtatute of chuſing knights of the parliament, 8 *H.* 6. *c.* 7. have done before: in all which, and ſome other ſtatutes, examination upon oath is given by expreſs and plain words. But they on the contrary ſide do ſtrongly defend their exacting an oath, by the example of the juſtices of the higher courts; and do alledge, that whereas the ſtatute of the 5 *H.* 4. *c.* 48. did ordain, without any mention of an oath, that in action of debt upon the arrearages of an account, the juſtices ſhould have power to examine the attornies and others, the juſtices of the bench do uſe in that caſe to miniſter on oath to the perſons examined. The like, they ſay, is daily done and practiſed in all the examinations of ſummoners, viewers, ſheriffs, clerks, and other officers, that do happen in the higher courts at Weſtminſter; and Mr Brooke (Tit. Examination. 32.) is of opinion, that every examination is to be handled upon oath. And therefore belike (ſay they) the ſtatute of 2 *Ed.* 6. *c.* 13. giving power to the ordinary to examine a man for his perſonal tithe, excepteth an oath, as though otherwiſe he might have required it of him. Beſides all this, they add for reaſon, that if theſe informers be examined on oath, then altho' it ſhould happen them to die before the priſoner hath his trial, yet may their information be given in evidence, as a matter of good credit; whereas otherwiſe, it would be of little

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or no weight at all, and thereby offenders ſhould the more eaſily eſcape. And, he adds, to this latter opinion, I myſelf am ready to ſubſcribe; as well becauſe I have heard ſome judges of aſſize deliver their minds accordingly, as alſo for that I have found by experience, that, without ſuch an oath, many informers will ſpeak coldly againſt a felon before the face of the judge, having perhaps firſt made their bargain with the offender or his friends, before that the judge did hear of the cauſe. *Lamb.* 213.

Mr Dalton, upon the ſame ſubject, ſays, The perſon accuſed ſhall not be examined upon oath, for by the common law no man is obliged to accuſe himſelf. But it ſeemeth convenient (he ſays), in caſes of felony eſpecially, that the information of the bringer and others, which the juſtices do take againſt the priſoner, be upon oath; otherwiſe, upon the trial of the priſoner, ſuch information taken by the juſtice ſhall not be read or delivered to the jury, nor given in evidence againſt the priſoner upon his trial. And ſo was the direction of the lord chief juſtice Coke at Cambridge ſummer aſſizes, upon the trial of a felon; for, ſaid he, in caſe of a treſpaſs, altho' it be only to the value of two pence, no evidence ſhall be given to the jury but upon oath, much leſs where the life of a man is in queſtion. *Dalt.* Old Ed. *c.* 111.

And lord Hale, ſpeaking of the ſame ſtatute, is expreſs, that the information of the proſecutor or witneſſes ought to be upon oath, altho' the ſtatute doth not mention an oath; which information upon oath, being ſworn on the trial to be truly taken by the juſtice or his clerk, may be given in evidence againſt the priſoner, if the witneſſes be dead or not able to travel. 1 *H. H.* 586.

Finally, Mr Dalton, in another place, ſpeaking of the caſe where one juſtice may puniſh offenders upon accuſation or proof generally, ſays, it ſeemeth that this muſt be by examination of witneſſes; and tho' the ſtatute doth not expreſsly ſet down that it ſhall be upon oath, yet it ſeemeth fit, that the juſtice do it upon oath: yea in all other caſes, whereſoever any man is authorized to examine witneſſes, ſuch authority to examine ſhall be taken and conſtrued to be in ſuch manner as the law will, which is only by oath. *Dalt.* Old Ed. *c.* 66.

Upon the whole, this difference of opinion, concerning the power of juſtices of the peace to adminiſter oaths in the ſeveral caſes that may happen, is a matter of moſt ſerious conſideration; and there being by the aforeſaid act

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of 15 *G.* 3. *c.* 39. a parliamentary declaration in one inſtance, which, ſo far as it goes, determines againſt a general power of the juſtices; and it being uncertain how far by parity of reaſon the like conſtruction may be extended to other inſtances; it is humbly ſubmitted, whether it might not be expedient to enact once for all, that in all caſes where by any act of parliament juſtices of the peace have cognizance, they ſhall have power to adminiſter an oath.

Perjury.

6. Where an oath is adminiſtred by a perſon that hath lawful authority to tender the ſame, and it be afterwards broken, yet if it be not in a judicial proceeding, it is no perjury, nor puniſhable by the common law. 3 *Inſt.* 166.

Therefore if one call another a *perjured* man, he may have an action on the caſe, becauſe it ſhall be intended to be contrary to his oath in a judicial proceeding; but for calling one a *forſworn* man, no action lies; becauſe the forſwearing may be extrajudicial, and conſequently no perjury in law. 3 *Inſt.* 166.

Of the oath of allegiance.

7. Every layman, above the age of 12 years, was anciently obliged to take the oath of allegiance at the tourn or leet, and it was a high contempt to refuſe it. 1 *Inſt.* 68.

But the clergy were not obliged to take the oath of allegiance till the reformation, any further than doing homage to the king for the lands held of him in right of the church. 1 *H. H.* 71, 72.

Lord *Hale*, ſpeaking of the ancient oath of allegiance, which continued above 600 years, ſays, that therein the prudence of the common law is obſervable, that it was ſhort and plain, not intangled with long and intricate clauſes or declarations, but that the ſenſe of it was obvious to the moſt common underſtanding, and yet withal comprehenſive of the whole duty of a ſubject to his prince. 1 *H. H.* 63. And from this the preſent form of the oath of allegiance hath not much varied.

Of the oath of ſupremacy.

8. The oath of ſupremacy came in, upon aboliſhing the papal authority at the reformation.

Of the oath of abjuration.

9. The oath of abjuration came in after the revolution; received ſome alterations in the firſt year of queen *Anne*; and again in the firſt year of king *George* the firſt; and finally, in the ſixth year of king *George* the third.

Perhaps it might be wiſhed, that it were made more applicable to lord *Hale's* rule, in being more ſhort and plain; there being in it ſeveral hard words, which probably many who

who take it do not well underſtand; and there being an act of parliament therein referred to, which perhaps not one in fifty who take it have conſulted.

10. Two juſtices may ſummon by writing under hand and ſeal, any perſon whom they ſhall ſuſpect to be dangerous or diſaffected to the government, to appear before them, at a certain day and time therein to be appointed, to take the oaths of allegiance, ſupremacy, and abjuration, and if ſuch perſon neglects or refuſes to appear, then on due proof made on oath of the ſummons having been ſerved on ſuch perſon, or left at his dwelling houſe, or uſual place of abode, with one of the family there, they ſhall certify the ſame to the next ſeſſions, there to be recorded by the clerk of the peace. And if ſuch perſon ſhall neglect or refuſe to appear and take the oaths at the ſaid ſeſſions (the name of ſuch perſon being publickly read at the firſt meeting of the ſaid ſeſſions), then ſuch perſon ſhall be eſteemed and adjudged a popiſh recuſant convict: and the ſame ſhall be thence certified by the clerk of the peace into the chancery or king's bench, to be there recorded. 1 *G. ſt.* 2. *c.* 13. *ſ.* 10, 11. Summoning perſons to take the oaths.

Whom they ſhall ſuſpect] It ſeemeth that a bare ſuſpicion is not ſufficient, but there ſhould be ſome good cauſe of ſuſpicion, and that the cauſe of ſuſpicion is traverſable. *Read.* Oath.

Refuſe — to take the oaths] A perſon cannot be ſaid to *refuſe* the oaths, unleſs they be read to him, or offered to be read. *Read.* Oath.

II. The common forms of oaths.

1. The oath of allegiance, by the 1 *G. ſt.* 2. *c.* 13. Oath of allegiance.

I A. B. *do ſincerely promiſe and ſwear, that I will be faithful, and bear true allegiance to his majeſty king* George: *So help me God.*

2. The oath of ſupremacy, by the 1 *G. ſt.* 2. *c.* 13. Oath of ſupremacy.

I A. B. *do ſwear, that I do from my heart abhor, deteſt, and abjure, as impious and heretical, that damnable doctrine and poſition, that princes excommunicated or deprived by the pope, or any authority of the ſee of* Rome, *may be depoſed or murdered by their ſubjects, or any other whatſoever. And I do declare, that no foreign prince, perſon, prelate, ſtate, or potentate, hath, or ought to have, any juriſdiction, power, ſuperiority, pre-eminence or authority, eccleſiaſtical or ſpiritual, within this realm: So help me God.*

3. The

Oath of abjuration.

3. The oath of abjuration, by the 6 *G.* 3. *c.* 53.

I A. B. *do truly and ſincerely acknowledge, profeſs, teſtify, and declare in my conſcience, before God and the world, that our ſovereign lord king* George *is lawful and rightful king of this realm, and all other his majeſty's dominions thereunto belonging. And I do ſolemnly and ſincerely declare, that I do believe in my conſcience, that not any of the deſcendants of the perſon who pretended to be prince of* Wales *during the life of the late king* James *the ſecond, and ſince his deceaſe pretended to be, and took upon himſelf, the ſtyle and title of king of* England, *by the name of* James *the third, or of* Scotland, *by the name of* James *the eighth, or the ſtyle and title of king of* Great Britain, *hath any right or title whatſoever, to the crown of this realm, or any other the dominions thereunto belonging: And I do renounce, refuſe, and abjure any allegiance or obedience to any of them. And I do ſwear, that I will bear faith and true allegiance to his majeſty king* George, *and him will defend, to the utmoſt of my power, againſt all traiterous conſpiracies and attempts whatſoever, which ſhall be made againſt his perſon, crown or dignity. And I will do my utmoſt endeavour to diſcloſe and make known to his majeſty, and his ſucceſſors, all treaſons and traiterous conſpiracies which I ſhall know to be againſt him or any of them. And I do faithfully promiſe, to the utmoſt of my power, to ſupport, maintain and defend the ſucceſſion of the crown againſt the deſcendants of the ſaid* James, *and againſt all other perſons whatſoever; which ſucceſſion, by an act, intitled,* An act for the further limitation of the crown, and better ſecuring the rights and liberties of the ſubject, *is and ſtands limited to the princeſs* Sophia, *electoreſs and dutcheſs dowager of* Hanover, *and the heirs of her body, being proteſtants. And all theſe things I do plainly and ſincerely acknowledge and ſwear, according to theſe expreſs words by me ſpoken, and according to the plain and common ſenſe and underſtanding of the ſame words, without any equivocation, mental evaſion, or ſecret reſervation whatſoever. And I do make this recognition, acknowledgment, abjuration, renunciation, and promiſe, heartily, willingly, and truly, upon the true faith of a chriſtian: So help me God.*

Declaration againſt tranſubſtantiation

4. The declaration againſt tranſubſtantiation; by the 25 *C.* 2. *c.* 2. *ſ.* 9.

I A. B. *do declare, that I do believe, that there is not any tranſubſtantiation in the ſacrament of the Lord's ſupper or in the elements of bread and wine, at or after the conſecration thereof by any perſon whatſoever.*

Declaration againſt popery.

5. The declaration againſt popery; by the 30 *C.* 2. *ſt.* 2. *c.* 1.

I A. B. *do ſolemnly and ſincerely, in the preſence of God, profeſs, teſtify and declare, that I do believe, that in the ſacrament of the Lord's ſupper there is not any tranſubſtantiation of the elements of bread and wine into the body and blood of* Chriſt, *at or after the conſecration thereof by any perſon whatſoever: And that the invocation, or adoration of the virgin* Mary, *or any other ſaint, and the ſacrifice of the maſs, as they are now uſed in the church of* Rome, *are ſuperſtitious and idolatrous: And I do ſolemnly in the preſence of God, profeſs, teſtify and declare, That I do make this declaration, and every part thereof, in the plain and ordinary ſenſe of the words read unto me, as they are commonly underſtood by* Engliſh *proteſtants, without any evaſion, equivocation, or mental reſervation whatſoever, and without any diſpenſation already granted me for this purpoſe by the pope, or any other authority or perſon whatſoever, and without any hope of any ſuch diſpenſation from any perſon or authority whatſoever, or without thinking that I am or can be acquitted before God or man, or abſolved of this declaration, or any part thereof, although the pope, or any other perſon or perſons, or power whatſoever, ſhall diſpenſe with or annul the ſame, or declare that it was null or void from the beginning.*

III. Quakers oaths.

Affirmation allowed.

1. In all caſes wherein by any act of parliament an oath ſhall be allowed or required, the ſolemn affirmation of quakers ſhall be allowed inſtead of ſuch oath; and that, altho' no expreſs proviſion be made for that purpoſe in ſuch act. 22 *G.* 2. *c.* 46. And therefore ſuch proviſions, which are very frequent in acts of parliament, are ſuperfluous.

Perjury incurred by falſe affirmation.

2. And if any perſon ſhall be lawfully convicted of wilful, falſe, and corrupt affirming or declaring any matter or thing, which if ſworn in the uſual form would have amounted to wilful and corrupt perjury, he ſhall ſuffer as in caſes of perjury. 8 *G.* *c.* 6. *ſ.* 2.

Affirmation not allowed in criminal matters.

3. But no quaker ſhall by virtue hereof be qualified or permitted to give evidence in any criminal cauſe, or ſerve on any juries, or bear any office or place of profit in the government. 7 & 8 *W.* *c.* 34. *ſ.* 6.

In any criminal cauſe] By which words it ſeemeth, that a quaker ſhall not have ſureties of the peace or good behaviour granted to him, or have a warrant to ſearch for ſtollen goods, or ſue the hundred for damages in caſe of robbery, and the like, upon his bare affirmation; but that

that in all ſuch caſes, an oath is firſt neceſſary to be made.

Thus, *T.* 4 *G.* 2. *K.* and *Wych.* It was denied to read a quaker's affirmation, on a motion for an *information* for a miſdemeanor. *Str.* 872.

T. 7. *G. Robins* and *Sayward.* By the court, We cannot ground an *attachment* for non-performance of an award, on the affirmation of a quaker; for though it be in a ſuit between party and party, yet it is a criminal proſecution within the proviſo of the ſtatute. *Str.* 441.

H. 3 *G.* 2. *Caſtell,* widow, againſt *Bambridge* and *Corbet.* In an *appeal* of murder, a quaker was called for a witneſs, and it was inſiſted that this is a civil ſuit between party and party, and not between the king and the party, and therefore his affirmation ought to be taken. But *Raymond* Ch. J. ſaid, it was to this purpoſe a criminal proceeding, and therefore he could not be a witneſs. *Str.* 856.

H. 8 *G.* 3. *K.* and *Gardner.* The affirmation of a quaker was offered, in *exculpation* of Mr. Gardner the defendant, upon ſhewing cauſe why an information ſhould not be exhibited againſt Mr. *Gardner* for a miſdemeanor. The reading of this affirmation was objected to. And the court held clearly, 1. That a quaker's affirmation could not be read in *ſupport* of a criminal charge. But, 2. They thought that an affirmation might be read in *defence* of a criminal charge, if the perſon charged was himſelf a quaker, in order to exculpate *himſelf.* 3. In this caſe of a *collateral* evidence, in aſſiſtance of the exculpation of another perſon, when the quaker himſelf was not charged at all, they thought his affirmation ought not to be read. And accordingly it was withdrawn. *Burrow, Mansfield.* 1117.

H. 16 *G.* 3. *Atcheſon* and *Everitt.* On an action of debt on the ſtatute againſt bribery, a quaker's affirmation was objected againſt becauſe bribery is a criminal offence, ſubjecting the offender not only to the penalty inflicted by the ſtatute, but alſo puniſhable as an offence at common law. But by the court, In all caſes, where an action and an indictment both lie for the ſame act, as in aſſault, impriſonment, and the like, a quaker is admiſſible as a witneſs in the action, tho' not on the indictment. *Cowper.* 382.

Or bear any office or place of profit in the government] *E.* 33 *G.* 2. *K.* and *March.* By an act of the 26 *G.* 2. *c.* 18. a certain oath is required to be taken and ſubſcribed upon admiſſion to the freedom of the *Turkey* company.

pany. *Iſaac Rogers*, a quaker, had made and ſubſcribed his ſolemn affirmation and declaration to the effect of the oath. The queſtion was, whether this ought to be admitted inſtead of the oath. By the court, this is no office or place of profit in the government. This man's claim is nothing more, than to be admitted into a company of merchants trading to a particular part of the world. Even the remittances of publick money for the uſe and account of the government, given by his majeſty to quakers, tho' the ſame may be very *profitable*, yet ſuch appointment is no *office* or *place* in the government. *Burrow*, *Manſfield*. 999.

General form of affirmation.

4. The quakers ſolemn affirmation, inſtead of an oath, as finally ſettled by the 8 *G*. *c*. 6. is as follows; *viz*.

" *I* A. B. *do ſolemnly, ſincerely, and truly declare and* " *affirm.*"

Declaration of fidelity.

5. Inſtead of the oaths of allegiance and ſupremacy, quakers ſhall be allowed to make the following declaration of fidelity; by the 8 *G*. *c*. 6.

I A. B. *do ſolemnly and ſincerely promiſe and declare, that I will be true and faithful to king* George; *and do ſolemnly, ſincerely and truly profeſs, teſtify and declare, that I do from my heart abhor, deteſt, and renounce, as impious and heretical, that wicked doctrine and poſition, that princes excommunicated or deprived by the pope, or any authority of the ſee of* Rome, *may be depoſed or murdered by their ſubjects, or any other whatſoever. And I do declare, that no foreign prince, perſon, prelate, ſtate, or potentate, hath or ought to have, any power, juriſdiction, ſuperiority, pre-eminence, or authority, eccleſiaſtical or ſpiritual, within this realm.*

Abjuration.

6. By the ſame act of the 8 *G*. *c*. 6. Quakers were allowed to take the effect of the abjuration oath according to the form therein preſcribed. After the death of the perſon pretending to be king of *England* by the name of *James* the third, it became neceſſary to alter the form of the abjuration oath. Accordingly by the 6 *G*. 3. *c*. 53. a new form of abjuration oath is preſcribed. But neither by that act, nor any other, is any proviſion made, for altering the quakers affirmation or declaration conformable thereunto. It ſeemeth that the form thereof ought to be thus:

I A. B. *do ſolemnly, ſincerely, and truly acknowledge, profeſs, teſtify, and declare, that king* George *is lawful and rightful king of this realm, and of all other his dominions and countries thereunto belonging; and I do ſolemnly and ſincerely declare, that I do believe, that not any of the deſcendants of the*

the perſon who pretended to be prince of Wales *during the life of the late king* James *the ſecond, and ſince his deceaſe pretended to be, and took upon himſelf the ſtyle and title of king of* England, *by the name of* James *the third, or of* Scotland, *by the name of* James *the eighth, or the ſtyle and title of king of* Great Britain, *hath any right or title whatſoever to the crown of this realm, or any other the dominions thereunto belonging; and I do renounce and refuſe any allegiance or obedience to any of them. And I do ſolemnly promiſe, that I will be true and faithful, and bear true allegiance to king* George, *and to him will be faithful, againſt all treacherous conſpiracies and attempts whatſoever, which ſhall be made againſt his perſon, crown or dignity. And I will do my beſt endeavour to diſcloſe and make known to king* George, *and his ſucceſſors, all treaſons and traiterous conſpiracies, which I ſhall know to be againſt him, or any of them. And I will be true and faithful to the ſucceſſion of the crown againſt the deſcendants of the ſaid* James, *and againſt all other perſons whatſoever, as the ſame is and ſtands ſettled by an act, intitled,* An act declaring the rights and liberties of the ſubject, and ſettling the ſucceſſion of the crown, *to the late queen* Anne, *and the heirs of her body, being proteſtants; and as the ſame, by one other act, intitled* An act for the further limition of the crown, and better ſecuring the rights and liberties of the ſubject, *is and ſtands ſettled and intailed, after the deceaſe of the ſaid late queen; and for default of iſſue of the ſaid late queen, to the late princeſs* Sophia, *electoreſs and dutcheſs dowager of* Hanover, *and the heirs of her body, being proteſtants. And all theſe things I do plainly and ſincerely acknowledge, promiſe, and declare, according to theſe expreſs words by me ſpoken, and according to the plain and common ſenſe and underſtanding of the ſame words, without any equivocation, mental evaſion, or ſecret reſervation whatſoever. And I do make this recognition, acknowledgment, renunciation, and promiſe, heartily, willingly, and truly.*

Profeſſion of belief.

7. The quaker's profeſſion of their belief; by the 1 *W. c.* 18.

I A. B *profeſs faith in God the Father, and in* Jeſus Chriſt *his eternal ſon, the true God, and in the Holy Spirit, one God bleſſed for evermore; and do acknowledge the holy ſcriptures of the old and new teſtament to be given by divine inſpiration.*

IV. Oaths of infidels.

1. A Jew is to be ſworn on the old teſtament, and perjury upon the ſtatute may be aſſigned upon this oath. 2 *Keb.* 314. Jews.

H. 2 *G.* 2. *Gomez Serra* and *Munez.* Upon error in debt upon a bond, the bail being both Jews were ſuffered to put on their hats while they took the oath. *Str.* 821.

When Jews take the oath of abjuration, the words [*on the true faith of a chriſtian*] ſhall be omitted. 10 *G.* *c.* 4. *ſ.* 18.

2. At the council, *Dec.* 9. 1738. Preſent the two chief juſtices. On a complaint of *Jacob Fachina* againſt general *Sabine*, as governor of *Gibraltar*, *Alderaman Ben Monſo*, a Moor, was produced as a witneſs, and ſworn upon the *Koran*. Str. 1104. Heathens.

So in the caſe of *Omichund* againſt *Barker*, *H.* 18 *G.* 2. In the court of chancery, the depoſitions of ſeveral perſons who were heathens of the *Gentou* religion, ſworn after their own country manner, were admitted to be read. 2 *Eq. Caſ. Abr.* 397. 1 *Atk.* 21.

Concerning the taking of oaths for qualifying for offices, ſee title **Office**.

And concerning the offences of profane curſing and ſwearing, ſee title **Swearing**.

Office.

I. Concerning the qualification for offices in corporations.

II. Concerning the qualification for offices in general.

III. Duty on the perquiſites of offices.

I. Qualifications for offices in corporations.

1. NO perſon ſhall be placed, elected, or choſen, to any office or place of mayor, alderman, recorder, bailiff, town clerk, common council man, or other office of magiſtracy, place, or truſt, or other employment, relating to the government of cities, corporations, boroughs, To receive the ſacrament, and take the oaths.

cinque ports, and other port towns, who ſhall not have received the ſacrament of the Lord's ſupper according to the rites of the church of *England*, within one year next before ſuch election: And every perſon ſo placed or elected, ſhall take the oaths of allegiance and ſupremacy, at the ſame time that the oath of office is taken; which ſhall be adminiſtred by thoſe, who by charter or uſage adminiſter the oath of office; and in default of ſuch, by two juſtices of the corporation, if there be any ſuch; or otherwiſe by two juſtices of the county. And in default thereof every ſuch election and placing ſhall be void. 13 *C.* 2. *ſt.* 2. *c.* 1. 5 *G.* *c.* 6. *ſ.* 1, 2.

And it hath been adjudged, to be no excuſe, that the oaths were not tendred. 1 *Haw.* 10.

Yet notwithſtanding that the words of this act of the 13 *C.* 2. (and alſo of the 25 *C.* 2. hereafter following) are very ſtrong as to make the officer's election void to all intents and purpoſes, yet it hath been ſtrongly holden, that the acts of a perſon under ſuch a diſability, being inſtated in ſuch an office, and executing the ſame without any objection to his authority, may be valid as to ſtrangers; for otherwiſe not only thoſe who no way infringe this law, but even thoſe whoſe benefit is intended to be advanced by it, might be ſufferers for one another's fault, to which they are no way privy; and one chaſm in a corporation, happening thro' the default of one head officer, would perpetually vacate the acts of all others, whoſe authority, in reſpect of their admiſſion into their offices, or otherwiſe, may depend on his. 1 *Haw.* 10.

Entring the ſame.

2. Which ſaid juſtices abovementioned ſhall cauſe memorandums to be made of ſuch oaths taken before them, and delivered once a year to the town clerk, or other regiſter or clerk, who ſhall enter the ſame in their books. 13 *C.* 2. *ſt.* 2. *c.* 1.

Limitation of actions.

3. But no ſuch office ſhall be void on account of not having received the ſacrament, unleſs the perſon ſhall be removed in ſix months, or unleſs proſecution ſhall be commenced in ſix months, and carried on without wilful delay. 5 *G.* *c.* 6. *ſ.* 3.

And if there be no ſuch removal, or proſecution within the ſaid time limited; the election ſtands confirmed, and becomes abſolute. *Burrow*, *Mansfield*. 1013. *Crawford* and *Powell*, *T.* 33 & 34 *G.* 2.

General clauſe of indemnification.

4. And generally there is a clauſe of indemnification in ſome act in almoſt every ſeſſion of parliament, provided they qualify on or before a time in ſuch act limited.

II. Quali-

II. *Qualification for offices in general.*

Receiving the ſacrament, and ſubſcribing the declaration.

1. Every perſon who ſhall be admitted into any office *civil or military*, or ſhall receive any pay by reaſon of any patent or grant from the king, or ſhall have any command or place of truſt in *England* or in the navy, or ſhall have any ſervice or employment in the king's houſhold; ſhall, within three months after his admiſſion, receive the ſacrament of the Lord's ſupper according to the uſage of the church of *England* in ſome publick church on the Lord's day, immediately after divine ſervice and ſermon: And in the court where he takes the oaths (as hereafter mentioned, which ſhall be within ſix months after his admiſſion) he ſhall firſt deliver a certificate (A) of ſuch his receiving the ſacrament, under the hands of the miniſter and churchwardens, and ſhall then make proof of the truth thereof by two witneſſes on oath. And they ſhall alſo, when they take the ſaid oaths, make and ſubſcribe the declaration againſt tranſubſtantiation. All which ſhall be inquired of, and put upon record in the reſpective courts. 25 *C.* 2. *c.* 2. *ſ.* 2, 3, 9.

Any office civil or military] This ſeemeth evidently not to extend to *eccleſiaſtical* offices. As if a clergyman be inſtituted to a benefice, altho he muſt take the oaths as other perſons qualifying for offices, yet he is not required to make proof of his having received the ſacrament: But if he is admitted into a *civil* office, as for inſtance, the office of a juſtice of the peace, he muſt then prove that he hath received the ſacrament; for the court in that reſpect conſiders him, not in his capacity of a clergyman, but merely as a civil officer.

Alſo, by the words of the ſtatute, the ſame ſhall not extend to the office of any *high conſtable*, *petty conſtable*, *tithingman*, *headborough*, *overſeer of the poor*, *churchwarden*, *ſurveyor of the highways*, or any like inferior civil office, or to any office of *foreſter*, or *keeper of any park*, *chaſe*, *warren*, *or game*, or of *bailiff of any manor or lands*, or to any like private offices. *ſ.* 17.

Taking the oaths.

1. Every perſon who ſhall be admitted into any office civil or military; or ſhall receive any pay by reaſon of any patent or grant from the king; or ſhall have any command or place of truſt in *England*, or in the navy; or ſhall have any ſervice or employment in the king's houſhold; all eccleſiaſtical perſons; heads and members of colleges, being of the foundation, or having any exhibition, of eighteen

years of age; and all perſons teaching pupils; ſchool-maſters and uſhers; preachers and teachers of ſeparate congregations; high conſtables, and practiſers of the law, ſhall, within ſix kalendar months after ſuch admiſſion, take and ſubſcribe the oaths of allegiance, ſupremacy and abjuration, in one of the courts at *Weſtminſter*, or at the general or quarter ſeſſions of the place where he ſhall be or reſide, between the hours of nine and twelve in the forenoon, and no other; and during the time of taking thereof, all proceedings in the ſaid court ſhall ceaſe. 1 *G. ſt.* 2. *c.* 13. *ſ.* 2. 2 *G.* 2. *c.* 31. *ſ.* 3, 4. 9 *G.* 2. *c.* 26. *ſ.* 3. 25 *G.* 2. *c.* 2. *ſ.* 2.

But this ſhall not extend to the office of tythingman, headborough, overſeer of the poor, churchwarden, ſurveyor of the highways, or any like inferior civil office, or to any office of foreſter, or keeper of any park, chaſe, warren, or game, or of bailiff of any manor or lands, or to any like private offices. 1 *G. ſt.* 2. *c.* 13. *ſ.* 20.

Which exception is the ſame with that in the 25 *G.* 2. ſave only, that *high conſtables* and *petty conſtables* by name are here omitted. *Petty conſtables* nevertheleſs ſeem to be excepted, as holding a *like inferior civil office* with the *tithingman* or *headborough*: But *high conſtables* are expreſsly inſerted amongſt the other officers required to take the oaths; although they are exempted by the former act, from being required to produce a certificate of their having received the ſacrament, and from ſubſcribing the declaration againſt tranſubſtantiation.

Inrolling and fee.

3. And the court ſhall inroll ſuch perſons names, with the day and time of taking the oaths, and making the declaration, in rolls kept for that purpoſe only; which ſhall be hung up in ſome publick place of ſuch court during the whole time of its ſitting, to be ſeen without fee. 25 *G.* 2. *c.* 2. *ſ.* 6.

And the clerk of the peace ſhall have no more than 2s for the entry. 1 *G. ſt.* 2. *c.* 13. *ſ.* 9.

But no ſeaman or ſoldier, under the degree of a commiſſion or warrant officer, ſhall pay any fee for taking the oaths. 1 *G. ſt.* 2. *c.* 13. *ſ.* 31.

Penalty of executing the office unqualified.

4. Every perſon making default herein, ſhall be incapable to hold his office; and if he ſhall execute his office, after the ſaid times are expired, he ſhall, upon conviction, be diſabled to ſue in any action, or to be guardian, or executor, or adminiſtrator, or capable of any legacy or deed of gift, or to bear any office, or vote at an election for members of parliament, and ſhall forfeit 500l to him who

who ſhall ſue for the ſame. 25 *C.* 2. *c.* 2. *ſ.* 4, 5. 1 *G. ſt.* 2. *c.* 13. *ſ.* 8.

5. But perſons beyond the ſeas, ſhall not be diſabled, if they ſhall qualify within ſix months after their return. 9 *G.* 2. *c.* 26. *ſ.* 4. Exception of perſons beyond ſeas.

6. Alſo no married woman, or perſon under 18 years of age, or *non compos mentis*, ſhall forfeit their office (other than ſuch married woman during the life of her huſband only) if they take the oaths, and do the other things required, within four months reſpectively, after the death of the huſband, coming to the age of 18 years, and becoming of ſound mind. 25 *C.* 2. *c.* 2. *ſ.* 13. Feme coverts: Infant: Non compos.

7. Likewiſe, by ſome act in almoſt every ſeſſion of parliament, perſons who have omitted to qualify themſelves in due time, are indemnified, provided they qualify within a time in ſuch act limited, and provided judgment hath not been given againſt them for the penalty incurred by their neglect, and provided their place is not filled up. General clauſe of indemnification.

8. Alſo, any perſon forfeiting his office may take a new grant thereof, on his taking the oaths, and conforming; provided it be not filled up before. 1 *G. ſt.* 2. *c.* 13. *ſ.* 14. Perſons diſqualified may take a new grant.

9. In the univerſities, where perſons ſhall not take the oaths, or ſhall not produce a certificate thereof, to be regiſtred in their proper college, and others be not elected in their places within 12 months, the king ſhall appoint and nominate. 1 *G. ſt.* 2. *c.* 13. *ſ.* 12, 13. Perſons diſqualified in the univerſities.

10. Perſons refuſing the oaths, having any office of inheritance, may appoint a deputy, ſo as ſuch deputy be approved by the king under his privy ſignet. 1 *G. ſt.* 2. *c.* 13. *ſ.* 18. Offices of inheritance may be executed by deputy.

Note, The forms of the aboveſaid oaths and declarations, are inſerted in the title *Oaths*.

III. Duty on the perquiſites of offices.

1. By the 31 *G.* 2. *c.* 22, altered and explained by the 32 *G.* 2. *c.* 33, there are certain duties laid upon offices and penſions; and ſo much of the ſalaries of ſuch offices, as ariſeth from perquiſites, is directed to be under the management of the commiſſioners of the land tax. Duty on the perquiſites of offices.

2. By *perquiſites* are meant ſuch profits of offices and employments, as ariſe from fees eſtabliſhed by cuſtom or authority, and payable either by the crown, or the ſubjects, in conſideration of buſineſs done in the courſe of Perquiſites what.

executing ſuch offices and employments. 32 *G.* 2. *c.* 33. *ſ.* 8.

General duty on offices and penſions.

3. And there ſhall be paid yearly, over and above all other duties, 1 s for every 20 s of the yearly value of all ſalaries, fees and perquiſites, incident unto or received for or in reſpect of all offices and employments of profit in *Great Britain*, and the like ſum of 1 s for every 20 s of all *penſions* and other gratuities payable out of any revenue belonging to his majeſty in *Great Britain*, exceeding the value of 100 l a year. 31 *G.* 2. *c.* 22. *ſ.* 1.

And a deduction ſhall be made thereof in the exchequer; or if paid by any perſon, and not out of the exchequer, then the ſame ſhall be paid by ſuch perſon into the exchequer. 31 *G.* 2. *c.* 22. *ſ.* 2.

So much thereof as relates to perquiſites, to be under the management of the commiſſioners of the land tax.

4. But where the profits of ſuch offices ſhall ariſe, in the whole or in part, from perquiſites due and payable in the courſe of office, and not from ſalaries, fees, and wages paid by the crown; the ſame ſhall be under the management of the commiſſioners of the land tax, who ſhall aſcertain, according to the valuation of ſuch offices to the land tax, or otherwiſe according to their beſt judgment, the ſum total of the perquiſites ariſing from ſuch office, diſtinct from the ſalary, fees, and wages thereof. 31 *G.* 2. *c.* 22. *ſ.* 3, 5, 6. 32 *G.* 2. *c.* 33. *ſ.* 5.

Manner of laying the aſſeſſment.

5. In order whereunto the commiſſioners ſhall meet at the moſt common places of meeting, yearly on or before *July* 3d, and afterwards as often as ſhall be neceſſary; and may ſubdivide; and any two or more of them, at ſuch general meeting, or within 8 days after, ſhall ſet down in writing, in a rate to be by them prepared for that purpoſe, the amount of the ſaid duty of 1 s in the pound, to be paid by all officers, their clerks, or agents, exerciſing any of the ſaid employments, the ſalary, wages, fees, and perquiſites whereof exceed the value of 100 l a year. 31 *G.* 2. *c.* 22. *ſ.* 6.

And for the better aſcertaining thereof, the receiver to be appointed by his majeſty for theſe duties ſhall tranſmit to the commiſſioners of the land tax in every diſtrict where any office is to be aſſeſſed, an account of all ſuch offices whereof the ſalaries, fees and wages do not exceed 100 l a year; and if the commiſſioners ſhall find that the perquiſites ariſing from ſuch office, together with the ſalary, fees, and wages thereof as certified by the receiver, do exceed together the amount of 100 l a year, they ſhall aſſeſs ſuch office, and cauſe the duty of 1 s a pound to be levied and collected thereon. 32 *G.* 2. *c.* 33. *ſ.* 6.

And

And where any perſon ſhall have two or more offices in any part of *Great Britain*, the ſalary and perquiſites whereof together exceed 100 l a year; ſuch perſon ſhall pay 1 s in the pound for the profits of ſuch offices, notwithſtanding the ſalary and perquiſites of no one of the ſaid offices is of the value of 100 l a year. 31 *G.* 2. *c.* 22. *ſ.* 23.

And deputies ſhall be liable to pay for their principals, and deduct the ſame out of the profits of their office. *ſ.* 27.

6. Provided, that nothing herein ſhall extend to the pay of commiſſion or non-commiſſion officers or private men ſerving in the navy or army. *ſ.* 24. Exemptions.

Nor to the pay of any military officers, ſerving on the ſtaff, or belonging to any of his majeſty's garriſons, regiments, troops, companies, *Cheſea Hoſpital*, or the hoſpitals of the army. 32 *G.* 2. *c.* 33. *ſ.* 11.

Nor to ſuch penſions or gratuities as the king ſhall declare in the warrant directing the payment thereof, to be intended as charitable donations. 32 *G.* 2. *c.* 33. *ſ.* 10.

Nor to any penſion, annuity, rent, or ſum charged upon the revenue by any of the king's predeceſſors, or by act of parliament, granted to any perſon in fee or fee tail, or till redeemed by payment of any ſum mentioned in any grant or act of parliament. *ſ.* 12.

Nor ſhall any thing in the ſaid act of the 32 *G.* 2. extend to charge any offices or employments in either of the two univerſities, with the duty by the ſaid act of 32 *G.* 2, impoſed. *ſ.* 13.

7. And the ſaid commiſſioners, or any three of them, ſhall within the time above limited ſign and ſeal two duplicates of the ſaid rates, and cauſe one of them to be delivered to the collector of the land tax for each place reſpectively, or to ſuch other two honeſt and reſponſible perſons as they ſhall at their diſcretion appoint to be collectors thereof; with warrant to collect. 31 *G.* 2. *c.* 22. *ſ.* 6. Signing the aſſeſſment.

8. Perſons thinking themſelves aggrieved by being *overrated*, may appeal to the barons of the exchequer; and the ſaid barons, or one of them, ſhall hear and determine all ſuch appeals, on or before the laſt day of *Michaelmas* term yearly.—Perſons charged may inſpect the rates in the day time; without fee. —— Notice of appeal, to be given in writing to a collector. 31 *G.* 2. *c.* 22. *ſ.* 6. Appeal.

And if any diſpute ſhall ariſe, whether the fees, ſalary, or wages of any office or employment, or whether any penſion or gratuity, be chargeable, or touching the

ſum which ought to be ſtopped and deducted thereout; the ſame ſhall be heard by the barons of the exchequer, on complaint or repreſentation laid in writing before them, either by the party grieved, or by the receiver. And the complainant ſhall give a copy of his complaint to the perſon againſt whom the ſame is made, within ten days after it ſhall have been lodged with the barons; and they ſhall hear and determine ſuch diſpute in a ſummary way, and their determination ſhall be final. 33 *G.* 2. *c.* 33. *ſ.* 3, 4.

Duplicates to be tranſmitted.

9. The commiſſioners ſhall cauſe to be delivered a duplicate in parchment, under their hands and ſeals, containing the whole ſum rated within each pariſh or place, to the ſaid receiver; and another, into the remembrancer's office in the exchequer; on or before the firſt day of *Hilary* term, or within 20 days after (all appeals being firſt determined). 31 *G.* 2. *c.* 22. *ſ.* 6.

Collecting.

10. And the ſaid duty ſhall be collected (where it is not herein otherwiſe directed) in all reſpects as the land tax for the year 1758. 31 *G.* 2. *c.* 22. *ſ.* 7.

And in all caſes where any fees, ſalaries, wages, or other allowances or profits on any office, ſhall be payable at the receipt of the exchequer, or by the cofferer of his majeſty's houſhold, or out of any other publick office, or by any of his majeſty's receivers or paymaſters; the duty, in caſe of non-payment, may be ſtopped there. *ſ.* 26.

Collector paying to the receiver.

11. And the payment of the ſaid ſums collected ſhall be paid to the receiver, in the courſe of the quarter wherein the ſame ſhall have been deducted; who ſhall give receipts for the ſame. 31 *G.* 2. *c.* 22. *ſ.* 12. 32 *G.* 2. *c.* 33. *ſ.* 1.

Receiver paying into the exchequer.

12. And the receiver ſhall, within the next quarter, pay the ſame into the exchequer. 32 *G.* 2. *c.* 33. *ſ.* 1.

A. Form of the certificate above mentioned.

WE *the miniſter and churchwardens of the pariſh of* —— *in the county of* —— *do hereby certify, that on* Sunday *the* —— *day of* —— *in the year of our Lord* —— *in the pariſh church of* —— *aforeſaid, immediately after divine ſervice and ſermon,* J. B. *of* —— *in the county of* —— *gentleman, did receive the ſacrament of the Lord's ſupper, according to the uſage of the church of* England. *Witneſs our hands the day and year above written.*

A. B. Miniſter.
C. D. } Church-
E. F. } wardens.

Orchards.

Orchards. See Wood.
Overſeers of the poor. See Poor.
Outlawry. See Proceſs.
Pamplets. See Stamps.
Paper. See Exciſe.
Papiſts. See Popery.
Parchment. See Stamps.

Pardon.

1. A Pardon is a work of mercy, whereby the king either before the attainder, ſentence, or conviction, or after, forgiveth any crime, offence, puniſhment, execution, right, title, debt, or duty, temporal or eccleſiaſtical. 3 *Inſt.* 233. Pardon, what.

2. Pardons are either *general* or *ſpecial*: *General*, are by act of parliament; of which, if they are without exceptions, the court muſt take notice *ex officio*; but if there are exceptions therein, the party muſt aver that he is none of the perſons excepted. 3 *Inſt.* 233. *Hale's Pl.* 252. General pardon.

By the act of 20 *G.* 2. *c.* 52. for the king's general pardon; all perſons are pardoned and diſcharged from all treaſons, miſpriſions of treaſons, felonies, treaſonable and ſeditious words and libels, leaſing making, miſpriſions of felony, offences whereby any perſon may be charged with the penalty of præmunire, riots, routs, offences, contempts, treſpaſſes, entries, wrongs, deceits, miſdemeanors, forfeitures, penalties, ſums of money, pains of death, pains corporal, and pains pecuniary, and generally from all other things, cauſes, quarrels, ſuits, judgments, and executions not by this act excepted, which can by the king be pardoned, and which were done or incurred before *June* 15, 1647. —Excepted, perſons in the ſervice of the pretender, or of *France* or *Spain*; forging the king's ſeal; coining; violating the privileges of ambaſſadors; murders; petty treaſons; poiſonings; burning of houſes, corn, hay, ſtraw, wood; ſhooting at any perſon; ſending threatning letters; piracy; deſtroying ſhips; offences in the navy or army; burglary; ſacrilege; robbery; ſodomy; buggery; rape; perjury; ſubornation; forgery

gery; felony in caſes of bankruptcy; deſtroying banks of rivers and ſea banks; firing coal pits; offences againſt the exciſe, cuſtoms, land tax, poſt office, ſtamp duties, duty on houſes and windows, wool, importing or exporting goods; offences concerning highways or bridges; imbeziling goods, and warlike ſtores of the crown; titles of quare impedit; inceſt; ſimony; dilapidations; firſt fruits; tenths; money due to the king from publick officers on account; perſons tranſported; offences by papiſts; contempts in caſes for non-performance of awards, or non-payment of coſts; contempts in eccleſiaſtical courts, in cauſes commenced for matters of right only, and not for correction; contempts in courts of admiralty proceeding civilly, and not criminally; and excepted, ſeveral perſons by name.

And the like, for the moſt part, hath been enacted by former ſtatutes of general pardon.

Special pardon.

3. *Special* pardons, are either *of courſe*, as to perſons convicted of manſlaughter, or *ſe defendendo*, and by divers ſtatutes to thoſe who ſhall diſcover their accomplices in ſeveral felonies; or, of *grace*, which are by the king's charter, of which the court cannot take notice *ex officio*, but they muſt be pleaded. 3 *Inſt.* 233

Pardon to contain the ſuggeſtion.

4. By the 27 *Ed.* 3. *c.* 2. In every charter of the pardon of felony, the ſuggeſtion, and the name of him that maketh the ſuggeſtion, ſhall be comprized; and if it be found untrue, the charter ſhall be diſallowed.

Pardon to ſpecify the offence.

5. And by the 13 *R.* 2. *ſt.* 2. *c.* 1 No charter of pardon ſhall be allowed for murder, treaſon, or rape, unleſs the offence be ſpecified therein.

Lord *Coke* ſays, the intention of this act was not, that the king ſhould grant a pardon of murder by expreſs name in the charter, but becauſe the whole parliament conceived that he would never pardon murder by ſpecial name. And he ſays, he hath never ſeen any pardon of murder by any king of *England*, by expreſs name. 2 *Inſt.* 233, 236.

The king cannot pardon an offence before it is committed.

6. The king cannot pardon an offence before it is committed; but ſuch pardon is void. 2 *Haw.* 389.

Cannot pardon an appeal.

7. As the releaſe of the party will not bar an indictment at the ſuit of the king; ſo neither will a pardon by the king be any bar to an appeal at the ſuit of the party. 2 *Haw.* 392.

Cannot pardon a nuſance.

8. And in ſome caſes even where the king is ſole party, ſome things there are which he cannot pardon; as for example, for all common nuſances, as for not repairing of bridges or highways, the ſuit (for avoiding multiplicity

city of ſuits) is given to the king only, for redreſs and reformation thereof; but the king cannot pardon or diſcharge either the nuſance, or the ſuit for the ſame; becauſe ſuch pardon would take away the only means of compelling a redreſs of it. But it hath been holden by ſome, that a pardon of ſuch offence will ſave the party from any fine, for the time precedent to the pardon. 3 *Inſt.* 237. 2 *Haw.* 391.

Cannot diſcharge a recognizance.

9. Thus alſo, if one be bound by recognizance to the king, to keep the peace againſt another by name, and generally all other lieges of the king; in this caſe, before the peace be broken, the king cannot pardon or releaſe the recognizance, altho' it be made only to him, becauſe it is for the benefit and ſafety of his ſubjects. 3 *Inſt.* 238.

Cannot releaſe an information qui tam.

10. Likewiſe, after an action popular is brought, *as well for the king as for the informer*, according to any ſtatute, the king can but diſcharge his own part, and cannot diſcharge the informer's part; becauſe by bringing of the action the informer hath an intereſt therein: but before the action brought, the king may diſcharge the whole (unleſs it be provided to the contrary by the act) becauſe the informer cannot bring an action or information originally for his part only, but muſt purſue the ſtatute. And if the action be given to the *party grieved*, the king cannot diſcharge the ſame. 3 *Inſt.* 231.

May diſcharge a ſuit in the ſpiritual court.

11. It ſeems to have been always agreed, that the king's pardon will diſcharge any ſuit in the ſpiritual court *ex officio*: Alſo it ſeems to be ſettled at this day, that it will diſcharge any ſuit in ſuch court at the inſtance of the party, for the reformation of manners, or welfare of the ſoul, as for defamation, or laying violent hands on a clerk, and ſuch like; for ſuch ſuits are in truth the ſuits of the king, tho' proſecuted by the party. Alſo, it ſeems to be agreed, that if the time to which ſuch pardon hath relation, be prior to the award of coſts to the party, it ſhall diſcharge them: And it ſeems to be the general tenor of the books, that tho' it be ſubſequent to the award of the coſts, yet if it be prior to the taxation of them, it ſhall diſcharge them; becauſe nothing appears in certain to be due for coſts before they are taxed. 1 *Haw.* 394.

But it ſeems agreed, that a pardon ſhall not diſcharge a ſuit in the ſpiritual court, any more than in a temporal, for a matter of intereſt or property in the plaintiff; as for tithes, legacies, matrimonial contracts, and ſuch like. 2 *Haw.* 394.

Doth not by releaſing a man releaſe his partner.

12. If the king releaſe to a man all debts, this ſhall not diſcharge his partner; but otherwiſe it is in caſe of a ſubject, for in that caſe the releaſe to one diſcharges both. 3 *Inſt.* 239.

Perſon pardoned may be bound to the good behaviour.

13. When a pardon is pleaded by any one for felony, the juſtices may at their diſcretion remand him to priſon till he enter into recognizance, with two ſureties, for his good behaviour, for any time not exceeding ſeven years. 5 *W.* *c.* 13.

Pardon doth not reſtore lands or goods forfeited.

14. It ſeems to be a ſettled rule, that no pardon by the king, without expreſs words of reſtitution, ſhall deveſt, either from the king or ſubject, an intereſt either in lands, or goods, veſted in them, by an attainder or conviction precedent: Yet it ſeems agreed, that a pardon prior to a conviction, ſhall prevent any forfeiture either of lands or goods. 2 *Haw.* 396.

Doth not reſtore the corruption of blood.

15. A pardon after the attainder doth not reſtore the corruption of blood, for this cannot be reſtored but by act of parliament. 3 *Inſt.* 233.

But as to iſſue born after the pardon, it hath the effect of the reſtitution of blood. 1 *H. H.* 358.

Doth reſtore the credit.

16. It ſeems to be ſettled at this day, that the pardon of treaſon or felony, even after a conviction or attainder, doth ſo far clear the party from the infamy and all other conſequences of his crime, that he may not only have an action for a ſcandal, in calling him traitor or felon, after the time of the pardon, but may alſo be a good witneſs, notwithſtanding the attainder or conviction; becauſe the pardon makes him as it were a new man, and gives him a new capacity and credit. 2 *Haw.* 395.

But it ſeems to be the better opinion, that the pardon of a conviction of *perjury* doth not ſo reſtore the party to his credit, as to make him a good witneſs; becauſe it would be an injury to the people in general, to make them ſubject to ſuch a perſon's teſtimony. 1 *Vent.* 349.

Parliament.

I. Matters previous to the election.
II. Election to be free.
III. Qualification of the candidates.
IV. Qualification of the electors.

V. Polling.
VI. Return.
VII. Privilege of Parliament.
VIII. How long the Parliament ſhall continue.

I. matters previous to the election.

1. WHEN any new parliament ſhall be ſummoned, there ſhall be 40 days between the Teſte and return of the writ; and, as well upon the calling of any new parliament, as upon a vacancy in parliament time, the writ ſhall be delivered to the proper officer to whom the execution thereof doth belong, and to no other perſon: And every ſuch officer, upon receipt of the writ, ſhall indorſe thereon the day that he received it. 7 & 8 *W.* c. 25. *ſ.* 1. Time of proceeding to the election in counties.

And upon an election of a knight of the ſhire, the ſheriff ſhall proceed to the election at the next county court, unleſs the ſame be held within 6 days after the receipt of the writ or upon the ſame day, and then ſhall adjourn the ſame court to ſome other convenient day (not being longer than 16 days, 18 *G.* 2. *c.* 18. *ſ.* 10.) giving 10 days notice of the time and place of election. 7 & 8 *W.* c. 25. *ſ.* 3.

2. And the ſheriff ſhall appoint ſuch number of clerks as he ſhall think fit for taking the poll in the preſence of himſelf or deputy. Which clerks, before they begin to take the poll, ſhall be ſworn by the ſheriff or under-ſheriff truly and indifferently to take the poll, and to ſet down the names of each freeholder, and the place of his freehold; and for whom he ſhall poll, and to poll no freeholder who is not ſworn, if ſo required by any of the candidates. 7 & 8 *W.* c. 25. *ſ.* 3. Clerks for taking the poll.

3. And the ſheriff ſhall admit one perſon for each candidate to be inſpector of the clerks. 7 & 8 *W.* c. 25. *ſ.* 3. Inſpectors.

4. And the ſheriff ſhall erect, at the expence of the candidates, ſuch number of booths for taking the poll, as the candidates or any of them ſhall, three days at leaſt before the commencement of the poll, deſire; not exceeding the number of hundreds or other like diviſion, and not exceeding 15 in the whole; and ſhall affix, on the moſt publick part of each, the name of the hundred for which ſuch booth is deſigned. 18 *G.* 2. *c.* 18. *ſ.* 7. Booths to be erected.

And ſhall make out a liſt for each booth of the ſeveral towns, pariſhes, and hamlets, wholly or in part within ſuch

ſuch hundred; and ſhall on requeſt deliver a copy to any of the candidates, paying for the ſame 2 s. *Id.*

And ſhall appoint clerks at each booth to take the poll; who ſhall be paid by the candidates, not exceeding each one guinea a day. *Id.*

Cheque book.

5. And the ſheriff ſhall allow a cheque book for every poll book, for each candidate; to be kept by their inſpectors, at every place where the poll ſhall be taken. 18 *G.* 2. *c.* 18. *ſ.* 9.

In cities, boroughs, and towns corporate.

6. With reſpect to cities, boroughs, and towns corporate, the ſheriff or other officer who received the writ ſhall forthwith upon receipt thereof make out a precept to each borough, town corporate, or place within his juriſdiction where any members are to be elected, and within three days (and in the cinque ports within ſix days, 10 & 11 *W.* *c.* 7.) after receipt of the ſaid writ, ſhall by himſelf or proper agent deliver the precept to the proper officer of ſuch borough, town corporate or place within his juriſdiction, to whom the execution of ſuch precept doth belong, and to no other perſon whatſoever: And every ſuch officer ſhall indorſe the day of his receipt thereof in preſence of the party of whom he received the ſame, and ſhall forthwith cauſe publick notice to be given of the time and place of election, and ſhall proceed to the election within eight days after receipt of the precept, and give four days notice at leaſt of the day appointed for the election. 7 & 8 *W.* *c.* 25. *ſ.* 1.

And in a city or town being a county of itſelf, the ſheriff ſhall forthwith on receipt of the writ give publick notice of the time and place of election, and proceed to election thereupon, within eight days next after the receipt of the writ, and give three days notice thereof at leaſt, excluſive of the day of receipt of the writ and of the day of election. And the ſheriff ſhall allow a cheque book for every poll book for each candidate, to be kept by their inſpectors at the place of taking the poll. 19 *G.* 2. *c.* 28. *ſ.* 6, 7.

II. Election to be free.

By the 3 *Ed.* 1. *c.* 5. Becauſe elections ought to be free, the king commandeth upon great forfeiture, that no man by force of arms, nor by malice, or menacing, ſhall diſturb any to make free election.

And by the declaration of rights, 1 *W.* *ſſ.* 2. *c.* 2. it is inſiſted, That elections of members of parliament ought to be free: And that freedom of ſpeech, and debates or proceedings

proceedings in parliament, ought not to be impeached or queſtioned in any court or place out of parliament.

And by the 8 *G.* 2. *c.* 30. On notice of an election, the ſecretary at war ſhall ſend orders for the removal of ſoldiers one day at leaſt before the election, and not to return till after the poll ſhall be cloſed.—But this not to extend to the guards, nor to any caſtle or fortified place, where a garriſon is uſually kept: Nor to any officer or ſoldier having right to vote at ſuch election.

By the 9 *An.* *c.* 10. *ſ.* 44. No officer of the *poſt office* ſhall by word, meſſage, or writing, or in any other manner, endeavour to perſuade any elector to give, or diſſuade any elector from giving his vote in any election. —— And by the 5 *W.* *c.* 20. and 9 *An.* *c.* 11. *ſ.* 49. there is the like proviſion with reſpect to the officers of *exciſe*. —— And the like by the 12 & 13 *W.* *c.* 10. with reſpect to the officers of the *cuſtoms*.

III. Qualification of the candidates.

1. No perſon under the age of 21 years ſhall be capable of being elected. 7 & 8 *W.* *c.* 25. *ſ.* 8. Age.

2. No papiſt ſhall ſit in either houſe of parliament. 30 *C.* 2. *ſt.* 2. *c.* 1. Papiſt.

3. Sir William Blackſtone ſays, No perſon concerned in the management of any duties or taxes created ſince 1692, except the commiſſioners of the treaſury, nor any of the officers following, (viz. commiſſioners of prizes, tranſports, ſick and wounded, wine licences, navy, and victualling; ſecretaries or receivers of prizes; comptrollers of the army accounts; agents for regiments; governors of plantations and their deputies; officers of Minorca or Gibraltar; officers of the exciſe and cuſtoms; clerks or deputies in the ſeveral offices of the treaſury, exchequer, navy, victualling, admiralty, pay of the army or navy, ſecretaries of ſtate, ſalt, ſtamps, appeals, wine licences, hackney coaches, hawkers and pedlars,) nor any perſons that hold any new office under the crown created ſince 1705,—are capable of being elected or ſitting as members. 1 *Black.* 175. Placemen.

And if any member ſhall accept an office of profit from the crown, during ſuch time as he ſhall continue member (offices of the army and navy excepted), his election ſhall be void, and a new writ ſhall iſſue: But he ſhall be capable of being re-elected. 6 *An.* *c.* 7. *ſ.* 26.

4. By the 22 *G.* 3. *c.* 41. All perſons holding contracts made with the commiſſioners of the treaſury, navy, victu- Contractors.

victualling office, or board of ordnance, for or on account of the publick ſervice, ſhall, during the time they ſhall hold ſuch contracts, be incapable of being elected or of ſitting or voting in the houſe of commons.

Penſioners. 5. No perſon having a penſion from the crown during pleaſure, ſhall be capable of being elected. 6 *An. c.* 7. *ſ.* 25.

Neither ſhall any perſon having a penſion from the crown for any term of years, either in his own name, or in the name of any other in truſt for him, be capable of being elected. 1 *G. ſt.* 2. *c.* 56.

Eſtate. 6. No perſon ſhall be capable to ſit or vote in the houſe of commons for a county, unleſs he hath an eſtate freehold or copyhold, for his life or ſome greater eſtate, of the clear yearly value of 600 l; nor for a city or borough, unleſs he hath a like eſtate of 300 l. And any other candidate or two electors may, upon reaſonable requeſt to him made (at the time of the election, or before the day prefixed for the meeting of the parliament) require him to take the following oath:

I A. B. *do ſwear, that I truly and* bona fide *have ſuch an eſtate in law or equity, to and for my own uſe and benefit, of or in lands, tenements, or hereditaments, over and above what will ſatisfy and clear all incumbrances that may affect the ſame, of the annual value of* ——— *above reprizes, as doth qualify me to be elected and returned to ſerve as a member for the* ——— *of* ——— *according to the tenor and true meaning of the act of parliament in that behalf; and that my ſaid lands, tenements, or hereditaments are lying or being within the pariſh, townſhip, or precinct of* (as the caſe ſhall be). The ſame to be adminiſtred by the returning officer or two juſtices; who ſhall in three months certify the ſame into the chancery or king's bench.——But this not to extend to the eldeſt ſon of a peer, or of any perſon qualified to ſerve as knight of a ſhire, nor to the members for either of the two univerſities. 9 *An. c.* 5.

And every member, before he ſhall vote in the houſe of commons or ſit there during any debate, ſhall, after the ſpeaker is choſen, deliver in at the table in the middle of the houſe, whilſt the houſe is there ſitting, with the ſpeaker in the chair, an account ſigned by ſuch member, containing the name of the place where his qualification lies, declaring the ſame to be of the annual value of 600l above reprizes, if a knight of a ſhire; and of 300l if a citizen, burgeſs, or baron of the cinque ports; and ſhall alſo

alſo at the ſame time take and ſubſcribe the oath following:

I A. B. *do ſwear, That I truly and* bona fide *have ſuch an eſtate in law or equity, and of ſuch value, to and for my own uſe and benefit, of or in lands, tenements, or hereditaments, over and above what will ſatisfy and clear all incumbrances that may affect the ſame, as doth qualify me to be elected and returned to ſerve as a member for the place I am returned for, according to the tenor and true meaning of the acts of parliament in that behalf; and that ſuch lands, tenements, or hereditaments do lie as deſcribed in the paper or account ſigned by me, and now delivered to the clerk of the houſe of commons. So help me God.* — But this alſo ſhall not extend to the eldeſt ſon or heir apparent of a peer, or of any perſon qualified to ſerve as a knight of a ſhire, or to the members of either of the univerſities. 33 *G.* 2. *c.* 20.

IV. Qualifications of the electors.

1. No perſon ſhall be admitted to vote under the age of 21 years. 7 & 8 *W.* *c.* 25. *ſ.* 8. Age.

2. Every elector, before he is admitted to vote, ſhall, if required, take the oath of abjuration. 6 *An.* *c.* 23. *ſ.* 13. Papiſt.

3. By the 22 *G.* 3. *c.* 41. No perſon employed in managing the duties of exciſe, cuſtoms, ſtamp duties, ſalt, houſes and windows, or revenue of the poſt office, ſhall be capable of voting for a member to ſerve in parliament; and if he ſhall preſume to vote during the time that he ſhall hold ſuch office, or within 12 calendar months after he ſhall have ceaſed to hold the ſame, his vote ſhall be void, and he ſhall forfeit 100 l. Perſon employed in the revenue.

4. By the 8 *H.* 6. *c.* 7. Every elector of a knight of the ſhire ſhall have land or tenement to the value of 40 s by the year at leaſt above reprizes. And the ſheriff ſhall have power to examine upon oath every ſuch chuſer how much he may expend by the year.—And by the 10 *H.* 6. *c.* 2. the ſaid 40 s a year ſhall be freehold. Freehold of 40 s a year.

And by the 18 *G.* 2. *c.* 18. No perſon ſhall vote for a knight of the ſhire, without having a freehold eſtate in the county, of the clear yearly value of 40 s, over and above all rents and charges payable out of the ſame. 18 *G.* 2. *c.* 18. *ſ.* 5.

But taxes and aſſeſſments ſhall not be deemed a charge payable out of the lands. *ſ.* 6.

Fraudulent conveyance.

5. No perſon ſhall vote for any eſtate which was granted to him fraudulently, on purpoſe to qualify him to give his vote. 18 *G.* 2. *c.* 18. *ſ.* 5.

But all ſuch conveyances fraudulently made to qualify any perſon to vote, ſubject to conditions to defeat the ſame, ſhall be deemed and taken as abſolute againſt the perſon executing the ſame, and diſcharged of all truſts, conditions, and other defeazances; and all bonds, covenants, or other ſecurities for the defeating or reconveying the ſame, ſhall be void. 10 *An.* *c.* 23. *ſ.* 1.

Spliting votes.

6. All conveyances to multiply voices, or to ſplit votes, ſhall be void; and no more than one voice ſhall be admitted for one and the ſame houſe or tenement. 7 & 8 *W.* *c.* 25. *ſ.* 7.

None to vote more than once.

7. No perſon ſhall vote in any election more than once. 18 *G.* 2. *c.* 18. *ſ.* 5.

Mortgage, or truſt eſtate.

8. The mortgagor or *ceſtui que truſt* ſhall vote; and not the truſtee or mortgagee, unleſs they be in actual poſſeſſion. 7 & 8 *W.* *c.* 25. *ſ.* 7.

Tenant in dower.

9. Huſbands of women intitled to dower out of the eſtates of their former huſbands, may vote in reſpect thereof, although the ſaid dower hath not been ſet out by metes and bounds; provided that the dower be worth 40*s* a year, and the huſband be in the actual receipt of the profits thereof. 20 *G.* 3. *c.* 17. *ſ.* 12.

Poſſeſſion for 12 months.

10. No perſon ſhall vote for a knight of the ſhire, without having been in the actual poſſeſſion of the eſtate for which he votes, or in the receipt of the rents or profits thereof for his own uſe, above 12 kalendar months; unleſs the ſame came to him by deſcent, marriage, marriage ſettlement, deviſe, or promotion to a benefice or office. 18 *G.* 2. *c.* 18. *ſ.* 5.

To be charged to the land tax.

11. No perſon ſhall vote for a knight of the ſhire in reſpect of any meſſuages, lands, or tenements, which have not, for ſix calendar months next before ſuch election, been aſſeſſed to the land tax, in his own name, or in the name of his tenant occupying the ſame. —— Provided that this ſhall not extend to annuities or fee farm rents (duly regiſtred) iſſuing out of the premiſſes, nor to any perſon who became intitled as aforeſaid to the premiſſes by deſcent, marriage, marriage ſettlement, deviſe, or promotion to a benefice or office, within twelve calendar months next before ſuch election; but ſuch perſon ſhall be intitled to vote, if the premiſes have been aſſeſſed within two years next before, in the name of the reſpective owner or occupier. 20 *G.* 3. *c.* 17. *ſ.* 1, 2.

And

And the commiſſioners of the land tax, at their meetings for appointing aſſeſſors, ſhall cauſe to be delivered to each aſſeſſor, a printed form of an aſſeſſment, according to which they ſhall make their aſſeſſments; which ſhall be in this manner:

County of N. to wit. For the pariſh of —— in the ſaid county.

An aſſeſſment made in purſuance of an act of parliament paſſed in the —— year of his majeſty's reign, for granting an aid to his majeſty by a land tax to be raiſed in Great Britain, for the ſervice of the year ——.

Names of proprietors.	Names of occupiers.	Sums aſſeſſed.
A. B. ——	Himſelf. ——	— — —
A. B. ——	C. D. ——	— — —
E. F. ——	C. D. ——	— — —
C. D. ——	G. H. ——	— — —
J. K. and L. M. ——	N. O. ——	— — —
P. Q. ——	R. S. and T. U. ——	— — —

Signed this —— day of —— 17 —— By us,

A. B. C. D. aſſeſſors.

And if any perſon ſhall hold or occupy any meſſuages, lands, or tenements belonging to different owners, the ſame ſhall be ſeparately rated, that the proportion of the land tax to be paid by each ſeparate owner may be aſcertained. *ſ.* 3, 20.

And they ſhall make three duplicates of ſuch aſſeſſments; and ſhall (at leaſt 14 days before delivering the aſſeſſments to the commiſſioners) cauſe one of the ſaid duplicates, or a fair copy thereof, to be ſtuck up upon the door of the church or chapel, or if it be an extraparochial or other place where there is no church or chapel, then on the door of the church or chapel next adjoining. *ſ.* 3.

And the ſaid duplicates ſhall be delivered to the commiſſioners, at their meeting for receiving the aſſeſſments. *ſ.* 3.

And if the name of any owner intitled to vote ſhall not appear to be inſerted in the aſſeſſment, he may, on giving notice in writing to one of the aſſeſſors, appeal to the ſaid commiſſioners; who ſhall amend the aſſeſſment as they ſhall

ſee cauſe: And if any perſon ſhall think himſelf aggrieved by the determination of the commiſſioners, he may appeal to the next ſeſſions, giving ten days notice thereof to one of the commiſſioners who ſigned the duplicate, and to one of the aſſeſſors of the place where the eſtate lies: and the ſeſſions may award coſts to either of the parties, and by their order or warrant levy the ſame by diſtreſs. And if the ſaid commiſſioners, or the juſtices in ſeſſions, upon any appeal before them reſpectively, ſhall find it requiſite to inſert the names of any perſons who have been improperly omitted; ſuch perſons ſhall be deemed to be rated, as effectually as if their names had been originally inſerted. *ſ.* 3, 10, 11.

And the commiſſioners ſhall cauſe one of the duplicates ſo amended (after having been ſigned and ſealed by the ſaid commiſſioners or any three of them) to be returned to the aſſeſſors; who ſhall within ten days deliver the ſame to the chief conſtable, taking his receipt for the ſame; and the chief conſtable ſhall deliver upon oath ſuch duplicate, without alteration, at the next ſeſſions in open court, the firſt day of the ſeſſions, to the clerk of the peace, to be by him filed and kept amongſt the records. And if the aſſeſſor ſhall not deliver ſuch duplicate ſo amended to the chief conſtable; or if the chief conſtable ſhall neglect to deliver the ſame to the clerk of the peace, or wilfully alter the ſame; he ſhall forfeit 5 l. —— And at the Michaelmaſs ſeſſions yearly, the clerk of the peace ſhall examine, whether all the ſaid duplicates reſpectively have been delivered for that year; and if it ſhall appear that any ſuch duplicates have not been received by or delivered to ſuch clerk of the peace by the chief conſtables, he ſhall report the ſame to the court, and the court ſhall immediately impoſe the ſaid fine upon the chief conſtable, and the clerk of the peace ſhall give him immediate notice thereof; and if not immediately paid, the juſtices at ſuch ſeſſions ſhall by order of court iſſue a warrant of diſtreſs for the recovery thereof, directed to the conſtable of the place where ſuch chief conſtable ſhall dwell.—But if the chief conſtable ſhall make oath at ſuch ſeſſions, that ſuch duplicate was not delivered to him by the aſſeſſor, the ſaid fine ſhall be impoſed upon ſuch aſſeſſor or aſſeſſors; and the juſtices ſhall by order of court iſſue a warrant of diſtreſs for the recovery thereof, directed to the conſtable of the place or other ſuch perſon as they ſhall think proper, and ſhall require the chief conſtable to give notice to ſuch aſſeſſor of the ſaid fine being impoſed, who ſhall within 14 days give ſuch notice accordingly: and if ſuch aſſeſſors, or

one of them, ſhall not deliver ſuch duplicate to the clerk of the peace within ten days after ſuch notice, then the warrant of diſtreſs ſhall be put in execution againſt ſuch aſſeſſor accordingly. But if the aſſeſſor ſhall, within ten days after ſuch notice, produce to the clerk of the peace the chief conſtable's receipt for ſuch duplicate, then the fine ſhall be levied on the ſaid chief conſtable as aforeſaid. ——— Which ſaid fines, when recovered, ſhall be paid to the treaſurer, and applied as part of the county ſtock. *ſ.* 3—8.

And when any aſſeſſment ſhall not have been made by the aſſeſſors, and returned to the chief conſtable, and by him to the clerk of the peace; the juſtices in ſeſſions, or any two juſtices out of ſeſſions, may order ſuch aſſeſſments forthwith to be made and returned in manner aforeſaid. *ſ.* 9.

And it ſhall be lawful for all perſons, at any ſeaſonable times, to inſpect the duplicates in the hands of the clerk of the peace, paying 1 s for each inſpection; and the clerk of the peace ſhall on demand deliver copies of the whole or any part thereof (ſigned by him, purporting the ſame to be a true copy) being paid at the rate of 6 d for every 300 words: Which ſaid duplicates or copies thereof ſigned as aforeſaid; and alſo the duplicate of any aſſeſſment in the poſſeſſion of the commiſſioners, or in the poſſeſſion of the receiver general, or a copy of the ſaid duplicates ſigned by ſuch commiſſioners and purporting the ſame to be a true copy; ſhall be admitted as legal evidence. And after iſſuing the writ for the election, the clerk of the peace or his deputy ſhall attend gratis from day to day, from the hour of nine in the forenoon to three in the afternoon, at the place where the records are uſually kept, from the time of delivery of ſuch notice to the day immediately preceding the day of election; for the purpoſe of inſpection and making the copies. And if he ſhall fail of his duty in any of the ſaid particulars, he ſhall forfeit 500 l, with full coſts, to the party grieved, if the action be brought within two months, or otherwiſe to any perſon who ſhall ſue within 12 calendar months; and ſhall alſo forfeit his office and be incapitated for holding the like office for the future. *ſ.* 13—19.

Finally, the clerk of the peace ſhall, on reaſonable notice, attend at the election of every knight of the ſhire, with the original duplicates, at the requeſt of any candidate, paying to him after the rate of two guineas for each day of his attendance, and 1 s 6 d a mile for the coſts and charges in his journey from the place of his abode to and from the place of election. *ſ.* 14.

Freeholder's oath.

12. Every freeholder, before he is admitted to poll for a knight of the ſhire, ſhall, if required by a candidate or any elector, take the following oath (to be adminiſtred by the ſheriff, under-ſheriff, or one of the ſworn clerks): *You ſhall ſwear*, (or, being one of the people called Quakers, *You ſhall ſolemnly affirm*) *that you are a freeholder in the county of* ——— *and have a freehold eſtate, conſiſting of* ——— (ſpecifying the nature of ſuch freehold eſtate, whether meſſuage, land, rent, tithe, or what elſe; and if ſuch freehold eſtate conſiſts in meſſuages, lands, or tithes, then ſpecifying in whoſe occupation the ſame are; and if in rent, then ſpecifying the names of the owners or poſſeſſors of the lands or tenements out of which ſuch rent is iſſuing, or of ſome or one of them) *lying or being at* ——— *in the county of* ——— *of the clear yearly value of* 40 *s, over and above all rents and charges payable out of or in reſpect of the ſame; and that you have been in the actual poſſeſſion or receipt of the rents or profits thereof, for your own uſe, above* 12 *Kalendar months, or that the ſame came to you within the time aforeſaid, by deſcent, marriage, marriage ſettlement, deviſe, or promotion to a benefice in the church, or by promotion to an office; and that ſuch freehold eſtate hath not been granted or made to you fraudulently, on purpoſe to qualify you to give your vote; and that the place of your abode is at* ——— *in* ——— *and that you are* 21 *years of age, as you believe; and that you have not been polled before at this election.* ——— And if he falſifies, he ſhall ſuffer as in caſes of perjury. 18 *G.* 2. *c.* 18. *ſ.* 1.

And the ſheriff and clerks ſhall enter not only the place of his freehold, but alſo the place of his abode, as he ſhall declare the ſame at the time of giving his vote; and ſhall enter *jurat'* againſt the name of every ſuch voter who hath taken the oath. 10 *An. c.* 23. *ſ.* 5.

And the aforeſaid act of the 18 *G.* 2. *c.* 18. ſhall extend to *cities and towns that are counties of themſelves*, where perſons have a right to vote in reſpect of a freehold of 40 *s* a year; but not where they have a right to vote in reſpect of burgage tenure, or where the right to vote for a freehold doth not require the ſame to be of 40 *s* a year. 19 *G.* 2. *c.* 28.

Occaſional freemen in corpora-

13. No perſon claiming as a freeman to vote at an election for any city, town, port, or borough, ſhall be admitted to poll, unleſs he hath been admitted to his freedom 12 Kalendar months before the firſt day of the election: And if he ſhall preſume to vote contrary hereto, he

he ſhall forfeit 100 l, and his vote ſhall be void. And if any perſon ſhall antedate ſuch admiſſion, he ſhall forfeit 500 l. 3 *G.* 3. *c.* 15.

Provided, that nothing herein ſhall extend to the cities of London or Norwich; nor to any perſon intitled to his freedom by birth, marriage, or ſervitude, according to the cuſtom of ſuch city, town, port, or borough. *Id.*

14. No perſon ſhall vote in the election of a knight of a ſhire, or member for a city or town being a county of itſelf, in reſpect of any annuity or rent charge granted *before* June 1, 1763; unleſs a *certificate* upon oath be entred with the clerk of the peace or town clerk, 12 months before the election, as follows: *I* A. B. *of* ——— *am really and* bona fide *ſeiſed of an annuity or rent charge, for my own uſe and benefit, of the clear yearly value of* 40 s, *above all rents and charges payable out of the ſame, wholly iſſuing out of freehold lands, tenements, or hereditaments belonging to* C. D. *of* ——— *ſituate, lying and being in the pariſh, townſhip, or place, or in the pariſhes, townſhips, or places of* E. *in the county of* ——— *without any truſt, agreement, matter, or thing, to the contrary notwithſtanding; and I, or the perſon or perſons under whom I claim, was or were ſeiſed of the ſaid annuity or rent charge, before the firſt day of* June 1763. And a like certificate ſhall be entred *(mutatis mutandis)* where ſuch rent charge came by deſcent, marriage, deviſe, or promotion to a benefice or office. 3 *G.* 3. *c.* 24. *ſ.* 1, 2. Annuitants.

And no perſon ſhall vote at ſuch election in reſpect of any annuity or rent charge granted *after* June 1, 1763; unleſs a *memorial* of the grant of ſuch annuity or rent charge ſhall have been regiſtred with the clerk of the peace or town clerk, 12 Kalendar months at leaſt before the firſt day of ſuch election:

Which memorial ſhall be written on parchment, and directed to the clerk of the peace or town clerk, and ſhall be under the hand and ſeal of the grantor, and atteſted by two witneſſes, one whereof to be one of the witneſſes to the execution of ſuch grant; which witneſs ſhall upon oath before ſuch clerk prove the ſealing and delivery of the grant, and the ſigning and ſealing of the memorial:

And the ſaid memorial ſhall contain the day and year of the date, and the names, additions, and abodes of the parties and witneſſes, and all the lands and tenements out of which the rent charge iſſues, and the place where they lie:

And the grant ſhall, at the time of entring the memorial, be produced to ſuch clerk of the peace or town clerk, who ſhall indorſe thereon a certificate in which ſhall be mentioned the day and year on which ſuch memorial ſhall be entred. *ſ.* 3.

And no perſon ſhall vote by reaſon of an *aſſignment* of ſuch annuity or rent charge, without like certificate, entry, and memorial of ſuch grant and aſſignment, as in caſe of an original grant. *ſ.* 4.

The clerk of the peace or town clerk to have for the entry of ſuch certificate 1 s, and of the memorial 2 s; for ſearch thereof 1 s, and for copies at the rate of 6 d for every 200 words. *ſ.* 5.

Bribery. 15. By the 7 & 8 *W. c.* 4. No candidate, after Teſte of the writ of ſummons, or after a place becomes vacant in parliament time, ſhall, by himſelf, or by any other ways or means on his behalf, or at his charge, before his election, directly or indirectly, give or promiſe to give to any elector, any money, meat, drink, proviſion, preſent, reward, or entertainment, to or for any ſuch elector in particular, or to any county, city, town, borough, port, or place in general, in order to his being elected; on pain of being incapacitated.

And by the 2 *G.* 2. *c.* 24. (which is required to be read by the returning officer immediately after reading the writ, and alſo at Eaſter ſeſſions yearly for any county or city, and at every election of the chief magiſtrate in any borough, town corporate, or cinque port) —— Every perſon, before he is admitted to poll, ſhall, if required by either of the candidates or any two electors, take the following oath, to be adminiſtred by the returning officer or his deputy: *I* A. B. *do ſwear*, (or, being one of the people called Quakers, *I* A. B. *do ſolemnly affirm*) *I have not received or had by myſelf, or any perſon whatſoever in truſt for me, or for my uſe and benefit, directly or indirectly, any ſum or ſums of money, office, place, or employment, gift, or reward, or any promiſe or ſecurity for any money, office, employment, or gift, in order to give my vote at this election; and that I have not before been polled at this election.* ſ. 1.

And if any perſon ſhall take any money or other reward, or contract or agree for any money, gift, office, employment, or other reward, to give or forbear to give his vote; he ſhall forfeit 500 l. *ſ.* 7.

V. Polling.

Before the returning officer ſhall proceed to the election, he ſhall, immediately after the reading of the writ, take and ſubſcribe the following oath, to be adminiſtred by a juſtice of the peace or any three electors: *I A. B. do ſolemnly ſwear, That I have not, directly nor indirectly, received any ſum or ſums of money, office, place, or employment, gratuity, or reward, or any bond, bill, or note, or any promiſe of gratuity whatſoever, either by myſelf, or any other perſon to my uſe or benefit or advantage, for making any return at the preſent election of members to ſerve in parliament; and that I will return ſuch perſon or perſons as ſhall, to the beſt of my judgment, appear to me to have the majority of legal votes:* Which oath ſhall be entred amongſt the records of the ſeſſions. 2 *G.* 2. *c.* 24. *ſ.* 3.

And if the election ſhall not be determined upon view, with the conſent of the freeholders there preſent, but a poll ſhall be required, the ſheriff ſhall proceed to take the poll: and ſhall not adjourn the court to any other town or place, without the conſent of the candidates; nor ſhall, by any unneceſſary adjournment in the *ſame* place, protract or delay the election; but ſhall duly and orderly proceed to take the poll, from day to day, and time to time, without any further or other adjournment, without the conſent of the candidates, until all the freeholders then and there preſent be polled, and no longer. 7 & 8 *W.* *c.* 25. *ſ.* 3, 5.

And ſuch votes ſhall be deemed legal, which have been ſo declared by the laſt determination in the houſe of commons: Which laſt determination, concerning any county, city, borough, cinque port, or place, ſhall be final to all intents and purpoſes. *ſ.* 4.

And if any officer ſhall return any member contrary to the laſt determination in the houſe of commons, the ſame ſhall be adjudged a falſe return; and the party duly elected may recover double damages, with full coſts. — And the like remedy ſhall be againſt an officer making a *double* return. 7 & 8 *W.* *c.* 7.

VI. Return.

After the election, the names of the perſons choſen ſhall be written in an indenture under the ſeals of the electors, and tacked to the writ. 7 *H.* 4. *c.* 15.

And

And the ſheriff or other officer ſhall, on or before the day that the parliament ſhall be called to meet, and with all convenient ſpeed not exceeding 14 days after the election, return the writ to the clerk of the crown in chancery. 10 & 11 *W.* *c.* 7.

And he ſhall deliver copies of the poll to any perſon deſiring the ſame, paying a reaſonable charge for writing thereof. 7 & 8 *W.* *c.* 25. *ſ.* 6.

Finally, he ſhall, within 20 days after the election, deliver over upon oath (to be adminiſtred by the two next juſtices, 1 *Q.*) the poll books to the clerk of the peace, without alteration; to be kept amongſt the records of the ſeſſions. 10 *An.* *c.* 23. *ſ.* 5.

And on petition to the houſe of commons, complaining of an undue election, 49 members of the houſe of commons ſhall be choſen by ballot, out of whom each party ſhall alternately ſtrike out one, till they be reduced to the number of 13; who, together with two more, of whom each party ſhall nominate one, ſhall be a ſelect committee for determining ſuch controverted election. 10 *G.* 3. *c.* 16. 11 *G.* 3. *c.* 42.

VII. Privilege of parliament.

By the common law, a member of parliament ſhall have the privilege of parliament, not only for himſelf and his ſervants, to be freed from arreſt, ſubpœna, citation, and the like; but alſo for his horſes and goods to be free from diſtreſſes: but for treaſon, felony, and breach of the peace, there can be no privilege. 4 *Inſt.* 24, 25.

T. 31 *G.* 2. *Rex* v. *Earl Ferrers:* A writ of *habeas corpus* having been granted, and ſerved upon the ſaid earl, returnable *immediate*, to bring up the body of his counteſs, who was ſiſter to Sir *William Meredith*, (to the end that ſhe might have an opportunity to lay her caſe before the court, and ſwear the peace if ſhe ſhould think proper, thereby to receive the protection of the court againſt the ſaid earl); and he the ſaid earl having neglected to return the ſaid writ; Mr. *Norton* and the other counſel for Sir *William Meredith*, on behalf of his ſiſter, intended to have moved for an attachment againſt the earl for this his diſobedience. But ſome doubts and diſficulties

ficulties having been ſtarted by members of both houſes, concerning the privilege of peerage, and whether the court of king's bench could iſſue an attachment againſt a peer during the ſitting of parliament, and execute it upon him, only for a contempt to their court; Sir *William* judged it prudent to petition the houſe of lords, for their leave to proceed againſt the earl, and accordingly (by the hands of the earl of *Weſtmorland*) delivered a petition, ſtating the facts. Lord *Delaware* oppoſed it; and ſaid, it was too ſummary and haſty a method of determining upon their privileges; and propoſed referring the matter to a committee, and ſummoning Lord *Ferrers* to anſwer it in his place: And to obviate the objections, which might be made to this method, on account of the delay; he offered ſome ſchemes for the immediate ſafety of the counteſs. But lord *Mansfield* anſwered him, and ſpoke in ſupport of the juriſdiction of his court, and the unreaſonableneſs, injuſtice, and inconvenience of allowing ſuch a privilege, in criminal caſes and breaches of the peace. The duke of *Argyle* ſpoke to the like effect, and expreſſed a ſurprize that there ſhould be any doubt about it; the reaſon of the thing being ſo clear and plain. Laſtly, the earl of *Hardwicke* ſpoke ſtrongly and particularly in ſupport of the ſame doctrine, and adduced many inſtances and precedents in proof of his poſitions; and concluded with propoſing, that to put an end to all doubt about it for the future, the lords ſhould come to a reſolution; and accordingly they did come to the following reſolution or declaration, and ordered it to be entred on their journal, *viz.* "7 *Febr.* 1757, It is ordered and declared, that no "peer or lord of parliament hath privilege againſt being "compelled by proceſs of the courts of *Weſtminſter-hall*, "to pay obedience to a writ of *Habeas corpus* directed to "him." *Burrow, Mansfield.* 631.

By the 12 & 13 *W.* *c.* 3. and 11 *G.* 2. *c.* 24. Any perſon may bring an action againſt a peer or member of parliament, or any of their menial or other ſervants, immediately after the diſſolution or prorogation, until a new parliament meet, or the ſame be reaſſembled; and from any adjournment of both houſes for above 14 days, until both houſes ſhall meet or reaſſemble; and the courts during ſuch time may proceed to give judgment and award execution.——But this ſhall not extend to ſubject the perſon to be arreſted during the time of privilege; but the plaintiff may proſecute at law by ſummons and diſtreſs infinite, or by original bill, and ſummons, attachment,

and

and diſtreſs infinite, until the defendant ſhall enter a common appearance, or file common bail: And in equity, the plaintiff may proceed by letter or ſubpœna; and after ſervice thereof, may, for want of appearance or anſwer, or non-performance of an order or decree, or for breach thereof ſequeſter the real and perſonal eſtate of the party, but not arreſt his body.

By the 4 *G.* 3. *c.* 33. with reſpect to *bankrupts*, the petitioners, on affidavit of the debt, and that they verily believe that the debtor is a trader within the ſtatutes of bankruptcy, may ſue out a ſummons, or an original bill and ſummons, and ſerve him with a copy thereof; and if he ſhall not, within two months after ſervice, pay the debt or enter into bond to pay ſuch ſum as ſhall be recovered, with coſts, he ſhall be adjudged a bankrupt from the time of ſervice of the ſummons, and the creditors may proceed againſt him as againſt other bankrupts. Provided that this ſhall not extend to ſubject any perſon intitled to privilege to be arreſted during the time of ſuch privilege, except in caſes made felony by any of the ſtatutes of bankruptcy.

And by the 10 *G.* 3. *c.* 50. Any perſon may commence and proſecute any action in any court of record or court of equity, or of admiralty, (or, in cauſes matrimonial and teſtamentary, in any court having cognizance of cauſes matrimonial and teſtamentary,) againſt any peer or member of the houſe of commons, or any of their menial or other ſervants, or any other perſon intitled to privilege of parliament; and no proceedings thereupon ſhall be delayed under colour of ſuch privilege. Provided, that this ſhall not ſubject the perſon of any member of the houſe of commons to be arreſted or impriſoned on any ſuch ſuit or proceedings. And to remedy the dilatorineſs by proceſs of *Diſtringas*, the court out of which the writ proceeds, may order the iſſues levied from time to time to be ſold, and the money ariſing thereby to be applied to pay ſuch coſts to the plaintiff as the court ſhall think juſt, and the ſurplus to be detained till the defendant ſhall have appeared, or other purpoſe of the writ be anſwered. And obedience may be inforced to any rule of the court of king's bench, common pleas, or exchequer, againſt any perſon intitled to privilege, by diſtreſs infinite, if the perſon intitled to the benefit of ſuch rule ſhall chuſe to proceed in that way.

VIII. How long the parliament ſhall continue.

The parliament ſhall have continuance for 7 years, to be accounted from the day on which by the writ of ſummons they ſhall be appointed to meet; unleſs ſooner diſſolved by the king. 1 *G. ſt.* 2. *c.* 38.

And they ſhall not be diſſolved by the king's death, but ſhall continue and immediately meet, ſit, and act for ſix months, unleſs ſooner diſſolved by the ſucceſſor. And if there be then no parliament in being, the laſt preceding parliament ſhall meet, ſit, and act as aforeſaid. 7 & 8 *W.* *c.* 15. 6 *An.* *c.* 7.

Parſnips.

THE penalty for ſtealing parſnips is the ſame as for ſtealing turnips: For which, ſee the title **Turnips.**

Partition.

BY the 8 & 9 *W.* *c.* 31. intitled, An act for the eaſier obtaining partitions of lands in coparcenary, joint-tenancy and tenancy in common, it is enacted, that if the high ſheriff cannot conveniently be preſent at the execution of any judgment in partition, in ſuch caſe the under ſheriff in preſence of two juſtices may proceed to execution of the writ of partition.

Partridge. See **Game.**

Pawning.

BY the 30 *G.* 2. *c.* 24. If any perſon ſhall knowingly and deſignedly pawn, or exchange, or unlawfully diſpoſe of the goods of any other perſon, not being employed or authorized by the owner ſo to do, and ſhall be thereof convicted by the oath of one witneſs, or confeſ-

ſion,

ſion, before one juſtice; he ſhall forfeit 20 s, and if not forthwith paid, the ſaid juſtice ſhall commit him to the houſe of correction, or ſome other public priſon of the place where he ſhall reſide or be convicted, there to remain and be kept to hard labour for fourteen days, unleſs the forfeiture ſhall be ſooner paid: And if within three days before the expiration of the ſaid fourteen days the ſaid forfeiture ſhall not be paid; the ſaid juſtice, upon application of the proſecutor, ſhall order him to be publickly whipped in ſuch houſe of correction or priſon, or in ſome open public place of the city, diviſion, town, or place wherein the offence ſhall have been committed, as to ſuch juſtice ſhall ſeem proper. The ſaid forfeitures, when recovered, to be applied towards making ſatisfaction thereout to the party injured, and defraying the coſts of the proſecution, as ſhall be adjudged reaſonable by ſuch juſtice; but if the party injured ſhall decline to accept of ſuch ſatisfaction and coſts, or if there be any overplus of the ſame, then ſuch forfeitures or overplus ſhall be paid to the overſeers for the uſe of the poor of the pariſh or place where the offence was committed. *ſ.* 3.

And every perſon who ſhall take any goods by way of pawn, pledge, or exchange, ſhall forthwith enter or cauſe to be entered in a fair and regular manner, in a book to be kept for that purpoſe, a deſcription of ſuch goods, and the ſum advanced thereon, the day and year, and the name and place of abode of the perſon by whom they were pawned, and alſo the name and place of abode of the owner according to the information of the perſon ſo pawning the ſame; and ſhall at the ſame time give a duplicate or copy to the perſon ſo pawning the ſame, if required; on paying to him an halfpenny, if the goods are pawned for leſs than 20 s; and a penny, if pawned for 20 s, and not more than 5 l; and 2 d, if for any larger ſum: And in default of making ſuch entry and giving ſuch duplicate or copy if required, he ſhall forfeit 5 l, by diſtreſs by warrant of one juſtice, to be applied to the uſe of the poor as aforeſaid. *ſ.* 4.

And if in the courſe of any of the aforeſaid proceedings before any juſtice in purſuance of this act, it ſhall appear or be proved to the ſatisfaction of ſuch juſtice upon oath, that any of the goods ſo pawned are become or have been rendered of leſs value than the ſame were at the time of pawning thereof, through the default, neglect, or wilful miſbehaviour of the perſon to whom they were pawned; the ſaid juſtice ſhall award a reaſonable ſatisfaction to the

the owner in reſpect of ſuch damage, and the ſum ſo awarded ſhall be deducted out of the principal, and intereſt, and allowance for warehouſe room, which ſhall appear to be due to the perſon to whom they were pawned; and it ſhall be ſufficient for the pawner to pay or tender the money upon the balance, after deducting out of the principal and intereſt, and money paid for warehouſe room as aforeſaid, ſuch reaſonable ſatisfaction in reſpect of ſuch damage as ſuch juſtice ſhall order, and upon ſo doing, the juſtice ſhall proceed as if he had tendered the whole. *ſ.* 5.

And if any perſon ſhall knowingly buy or take in as a pledge, any linen or apparel entruſted to any other perſon to waſh, ſcour, iron, mend, or make up; and ſhall be convicted thereof, on the oath of one witneſs, or confeſſion, before one juſtice: he ſhall forfeit double the ſum given or lent on the ſame, to the poor, to be recovered as other forfeitures by this act; and ſhall be obliged to reſtore the ſaid goods to the owner in preſence of the juſtice. *ſ.* 6.

And if any perſon who ſhall offer by way of pawn, pledge, exchange, or ſale, any goods, ſhall not be able or ſhall refuſe to give a ſatisfactory account of himſelf, or of the means by which he became poſſeſſed thereof; or if there ſhall be any other reaſon to ſuſpect that ſuch goods are ſtolen, or otherwiſe illegally or clandeſtinely obtained: it ſhall be lawful for any perſon, his ſervants or agents, to whom the ſame ſhall be offered, to ſeize and detain ſuch perſon and the ſaid goods, and to deliver him as ſoon as conveniently may be into the cuſtody of the conſtable or other peace officer, who ſhall immediately convey ſuch perſon and the ſaid goods before a juſtice; and if ſuch juſtice ſhall upon examination and inquiry have cauſe to ſuſpect that the ſaid goods were ſtolen, or illegally or clandeſtinely obtained, he may commit him to ſafe cuſtody for any time not exceeding ſix days in order to be further examined; and if upon either of the ſaid examinations it ſhall appear to the ſatisfaction of ſuch juſtice, that the ſaid goods were ſtolen or illegally or clandeſtinely obtained, he ſhall commit the offender to the common gaol or houſe of correction, there to be dealt with according to law. Provided nevertheleſs, that if ſuch goods ſo ſeized and detained as aforeſaid ſhall afterwards appear to be the property of the perſon who offered the ſame to be pawned, exchanged, or ſold, or that he was authorized by the owner thereof to pawn, exchange, or ſell the ſame; the perſon who ſhall ſo ſeize or detain the party who offered the

the ſaid goods ſhall be indemnified for having ſo done, ſ. 7, 8.

And if the owner of any goods unlawfully pawned, pledged, or exchanged, ſhall make out either on his oath, or by the oath of one witneſs before one juſtice, that ſuch owner hath or hath had his goods unlawfully obtained or taken from him, and that there is juſt cauſe to ſuſpect that any perſon within the juriſdiction of ſuch juſtice hath knowingly and unlawfully taken to pawn, or by way of pledge, or in exchange, any goods of ſuch owner, and without his privity or authority; and make appear to the ſatisfaction of ſuch juſtice, probable grounds for ſuch the owner's ſuſpicion: ſuch juſtice may iſſue his warrant for ſearching in the day time the houſe, warehouſe, or other place of any ſuch perſon ſo charged as aforeſaid; and if the occupier of ſuch houſe, warehouſe, or other place ſhall, on requeſt to him made to open the ſame by any peace officer authoriſed to ſearch there by warrant of ſuch juſtice, refuſe to open and permit the ſame to be ſearched, it ſhall be lawful for ſuch peace officer to break open any ſuch houſe, warehouſe, or other place in the day time, and to ſearch as he ſhall think fit therein for the goods ſuſpected to be there, doing no wilful damage; and if any perſon ſhall oppoſe or hinder any ſuch ſearch, and ſhall be thereof convicted before one juſtice by the oath of one witneſs, he ſhall forfeit 5 l, and if the ſame ſhall not be immediately paid down, or within the ſpace of 24 hours, the juſtice ſhall commit him to the houſe of correction or ſome other publick priſon, there to be kept to hard labour for any time not exceeding one month, nor leſs than five days, unleſs in the mean time the forfeiture ſhall be paid; and ſuch forfeiture, when recovered, ſhall go to the poor: and if upon ſuch ſearch any of the goods ſhall be found, and the property of the owner ſhall be made out to the ſatisfaction of ſuch juſtice by the oath of one witneſs or confeſſion, ſuch juſtice ſhall thereupon cauſe the ſame to be forthwith reſtored to the owner. ſ. 9.

And if any goods ſhall be pawned or pledged for ſecuring any money lent thereon, not exceeding in the whole the principal ſum of 10 l and the intereſt thereof; and if within two years after the pawning thereof (proof having been made on oath by one witneſs, or by producing a duplicate of the entry directed to be given by this act as aforeſaid, before any ſuch juſtice, of the pawning of ſuch goods within the ſaid ſpace of two years) any ſuch pawner who was the real owner of ſuch goods at the time

time of the pawning thereof, ſhall tender to the perſon who lent on ſecurity of the ſaid goods the principal money borrowed thereon, and all intereſt due for the ſame, together with ſuch charges for the warehouſe room of the goods pawned as ſhall be agreed on at the time of pawning the ſame; and if the perſon who took the goods in pawn ſhall thereupon neglect or refuſe to deliver back the goods ſo pawned for any ſum not exceeding the ſaid principal ſum of 10l, to the perſon who borrowed the money thereon; then, and in ſuch caſe, on oath thereof made by the pawner, or ſome other credible perſon, any juſtice of the place where the perſon who took ſuch pawn ſhall dwell, on the application of the borrower, ſhall cauſe ſuch perſon to come before him, and ſhall examine on oath the parties themſelves, and ſuch other credible perſons as ſhall appear before him, touching the premiſſes: and if tender of the principal and intereſt, and charges for warehouſe room as aforeſaid, ſhall be proved by oath to have been made as aforeſaid, within the ſpace of two years; then on payment by the borrower of ſuch principal money and the intereſt due thereon, together with ſuch charges for warehouſe room as aforeſaid, to the lender, and in caſe the lender ſhall refuſe to accept thereof on tender before ſuch juſtice, the ſaid juſtice ſhall thereupon, by order under his hand, direct the goods ſo pawned forthwith to be delivered to the pawner: and if the lender ſhall neglect or refuſe to deliver up, or make ſatisfaction for ſuch goods as aforeſaid, as ſuch juſtice ſhall order; then he ſhall commit the party refuſing to the houſe of correction, or ſome other publick priſon, until he ſhall deliver up the ſaid goods according to the order of ſuch juſtice, or make ſatisfaction for the value thereof to the party intitled to the redemption. *ſ.* 10.

But if any pawn or pledge of goods, made by or for the proprietor, ſhall remain unredeemed for two years, the ſame ſhall be forfeited; the perſon to whom they were pawned may ſell the ſame; ſubject nevertheleſs to account for the overplus, if any ſhall be, of the produce of all ſuch goods which have been pledged for 40s and upwards, as by this act is directed. And he ſhall enter in a book to be kept for that purpoſe, a juſt account of the ſale of all ſuch goods, expreſſing the day when, the money for which, and the name and place of abode of the perſon to whom the ſame were ſold: and if they be ſold for more than the principal and intereſt and charge of warehouſe room, the overplus ſhall be paid on demand to the perſon on whoſe account ſuch goods were pawned; who ſhall for his ſatis-

faction be permitted to inſpect the entry to be made as aforeſaid of ſuch ſale, paying for ſuch inſpection the ſum of one penny, and no more; and if any perſon ſhall refuſe to permit ſuch perſon who pawned the goods to inſpect ſuch entry (ſuch perſon, if he be an executor, adminiſtrator or aſſignee, at ſuch time producing his letters teſtamentary, letters of adminiſtration or aſſignment); or if the goods were ſold for more than the ſum entred in ſuch book; or if ſuch perſon ſhall not make ſuch entry, or ſhall not have *bona fide* ſold the goods for the beſt price that he might have reaſonably got for the ſame, without his wilful default; or ſhall refuſe to pay ſuch overplus on demand as aforeſaid; he ſhall forfeit treble the value of ſuch goods to the perſon by whom, or on whoſe account they were pawned, to be recovered in any of his Majeſty's courts of record at *Weſtminſter*. ſ. 11, 12.

Provided, that no fee or gratuity ſhall be taken for any ſummons or warrant, granted by any juſtice in purſuance of this act, ſo far as the ſame relates to goods pawned, pledged, taken in exchange, or unlawfully diſpoſed of. ſ. 13.

And any juſtice, unto whom complaint upon oath ſhall be made of any offence committed againſt this act, ſhall iſſue his warrant for bringing before him, or ſome other juſtice of ſuch place, the perſon charged with ſuch offence; and the juſtice before whom he is brought, ſhall hear and determine the matter, and proceed to judgment and conviction: and if it ſhall appear, upon oath, to the ſatisfaction of ſuch juſtice, that any perſon within his juriſdiction can give material evidence on behalf of the proſecutor, or of the perſon accuſed, and who will not voluntarily appear; he ſhall iſſue his ſummons to convene him to give his evidence; and if he ſhall neglect or refuſe to appear on ſuch ſummons, and no juſt excuſe ſhall be offered, then (on proof upon oath of the ſummons having been duly ſerved upon him) he ſhall iſſue his warrant to bring ſuch witneſs before him; and on his appearance, if he ſhall refuſe to be examined on oath, without offering juſt cauſe for ſuch refuſal, the juſtice ſhall commit him to the publick priſon for any time not exceeding three months: and if on ſuch examination the juſtice ſhall deem the evidence of any ſuch witneſs to be material, he may bind over ſuch witneſs, unleſs a feme-covert, or under the age of 21 years, by recognizance in a reaſonable penalty, to appear and give evidence at the next ſeſſions or aſſizes. ſ. 16.

And

And no perſon charged on oath with being guilty of any of the offences puniſhable by this act, and which ſhall require bail, ſhall be admitted to bail before 24 hours notice at leaſt ſhall be proved by oath to have been given in writing to the proſecutor, of the names and places of abode of the perſons propoſed to be bail for any ſuch offender, unleſs the bail offered ſhall be well known to the juſtice, and he ſhall approve of them. And every ſuch offender who ſhall be bound over to the ſeſſions or aſſizes, ſhall be tried at the next ſeſſions or aſſizes to be held after his being apprehended, unleſs the court ſhall think fit to put off the trial on juſt cauſe made out to them. *ſ.* 17.

And in all proceedings on this act, any perſon ſhall be admitted to be a witneſs, notwithſtanding his being an inhabitant of the place wherein the offence ſhall have been committed. *ſ.* 18.

And the juſtice before whom any perſon ſhall be convicted upon this act, ſhall cauſe the conviction to be drawn up in the form, or to the effect following;

——— } *Be it remembred, that on this* —— *day of* ———
To wit, } *in the* ——— *year of his majeſty's reign*, A. B. *is convicted before* ——— *of his majeſty's juſtices of the peace for the ſaid county of* ——— [or, *for the riding, or diviſion, of the ſaid county of* ——— or, *for the city, liberty, or town, of* ——— as the caſe ſhall be] *for* ——— *and* ——— *the ſaid* ——— *do adjudge him (or her) to pay and forfeit for the ſame, the ſum of* ———. *Given under* ——— *the day and year aforeſaid.*

The ſame to be written upon parchment, and tranſmitted to the next ſeſſions, to be filed amongſt the records; and if any perſon ſhall appeal to the ſaid ſeſſions, the juſtices there ſhall, upon receiving the ſaid conviction, proceed to hear and determine the matter. *ſ.* 19.

And no *certiorari* ſhall be granted, to remove any proceedings on this act. *ſ.* 20.

And if any perſon convicted of any offence puniſhable by this act, ſhall think himſelf aggrieved by the judgment of the juſtice before whom he ſhall have been convicted, he may appeal to the next ſeſſions, and the execution of the judgment ſhall in ſuch caſe be ſuſpended, the perſon convicted entring into recognizance at the time of the conviction, with two ſureties in double the ſum he ſhall have been adjudged to pay, upon condition to proſecute ſuch appeal with effect, and to be forthcoming to abide

the judgment and determination of the ſaid ſeſſions: and the ſeſſions ſhall award ſuch coſts as ſhall appear juſt and reaſonable to be paid by either party; and if the judgment ſhall be affirmed, the appellant ſhall imediately pay the ſum adjudged to be forfeited, together with ſuch coſts as the court ſhall award, or, in default thereof, ſhall ſuffer the pains and penalties by this act inflicted upon perſons reſpectively, who ſhall neglect to pay, or ſhall not pay the forfeitures by this act to be paid. *ſ.* 21.

And perſons ſued for any thing done on this act, may have double coſts. *ſ.* 22.

And juſtices acting under this ſtatute ſhall be indemnified as by the 24 *G.* 2. *c.* 44. And no ſuit ſhall be commenced againſt any peace officer for any thing done in the execution of this act, until notice in writing ſhall have been given to him, or left at his uſual place of abode by the attorney employed againſt him; which notice ſhall contain the name and place of abode of the perſon who is to bring the action, together with the cauſe of action; and the name and place of abode of the attorney ſhall be underwritten or indorſed thereon; and ſuch peace officer may, at any time within 14 days after ſuch notice, tender or cauſe to be tendered any ſum as amends for the injury complained of, to the party complaining, or to the ſaid attorney; and if the ſame is not accepted of, the defendant may plead ſuch tender in bar of ſuch action, together with the general iſſue, or any other plea, with leave of the court; and if the jury ſhall find the amends to have been ſufficient, or otherwiſe the plaintiff ſhall fail in the action, he ſhall have his coſts; and if the plaintiff ſhall prevail he ſhall have ſuch damages as the jury ſhall think proper, together with full coſts. *ſ.* 23.

Peace. See **Surety.**
Peaſe, ſtealing: See **Turnips.**
Pedlars. See **Hawkers.**

Peers.

Not conſervators of the peace.

DUKES, earls, and barons are not conſervators of the peace at common law; and have no more power as ſuch, than mere private perſons. 2 *Haw.* 32.

2. The

2. The ſafeſt way of proceeding againſt a peer, for ſureties of the peace or good behaviour, is by complaint to the court of chancery or king's bench. 1 *Haw.* 127. Sureties of the peace againſt them.

3. A nobleman muſt be tried by his peers: but this is to be underſtood only at the ſuit of the king, upon an indictment of high treaſon, petit treaſon, felony, or miſprifion thereof; but in caſe of a præmunire, riot, or the like, and generally for all other crimes out of parliament, (unleſs otherwiſe ſpecially provided for by ſtatute, as it is in many inſtances) tho' it be at the ſuit of the king, he ſhall not be tried by his peers, but by the freeholders of the county. 3 *Inſt.* 30. 2 *Haw.* 424. Trial of peers.

4. Proceſs of outlawry lies againſt a peer, if he be indicted, and appears not, and cannot be taken; otherwiſe he might take advantage of his own contumacy. 3 *Inſt.* 31. Whether they may be outlawed.

5. Peers ſhall have the benefit of clergy for the firſt offence of felony, without burning in the hand. 1 *Ed.* 6. *c.* 12. *ſ.* 14. Whether they ſhall be burnt in the hand.

6. A peer produced as a witneſs ought to be ſworn. 3 *Keb.* 631. Evidence.

Penitentiary houſes, for the puniſhment of convicts; See **Tranſportation.**

Perry. See **Exciſe.**

Perjury and ſubornation.

I. Of perjury and ſubornation by the common law.

II. Of perjury and ſubornation by the ſtatute of the 5 El.

III. Of matters common to them both.

I. Of perjury and ſubornation by the common law.

1. PERJURY by the common law ſeemeth to be *a wilful falſe oath, by one who being lawfully required to depoſe the truth in any judicial proceeding, ſwears abſolutely, in a matter material to the point in queſtion, whether he be believed or not.* 1 Haw. 172. 3 Inſt. 164. Perjury at the common law.

Wilful] The falſe oath alledged againſt him, ſhould be proved to be taken with ſome degree of deliberation; for if upon the whole circumſtances of the caſe it ſhall appear

probable, that it was owing rather to the weakneſs than perverſeneſs of the party, as where it was occaſioned by ſurprize, or inadvertency, or a miſtake of the true ſtate of the queſtion, it cannot but be hard to make it amount to voluntary and corrupt perjury. 1 *Haw.* 172.

Falſe] It is ſaid not to be material, whether the fact which is ſworn, be in itſelf true or falſe; for however the thing ſworn may happen to prove agreeable to the truth, yet if it were not known to be ſo by him who ſwears to it, his offence is altogether as great as if it had been falſe, inaſmuch as he wilfully ſwears that he knows a thing to be true, which at the ſame time he knows nothing of, and impudently endeavours to induce thoſe before whom he ſwears, to proceed upon the credit of a depoſition, which any ſtranger might make as well as he. 1 *Haw.* 175.

Being lawfully required] It ſeemeth clear, that no oaths whatſoever, taken before perſons acting merely in a private capacity; or before thoſe who take upon them to adminiſter oaths of a publick nature, without legal authority; or before thoſe who are legally authorized to adminiſter ſome kinds of oaths, but not thoſe which happen to be taken before them; or even before thoſe who take upon them to adminiſter juſtice by virtue of an authority ſeemingly colourable, but in truth unwarranted and merely void, ——— can amount to perjuries, but are altogether idle and of no force. 1 *Haw.* 174.

In any judicial proceeding] For tho' an oath be given by him that hath lawful authority, and the ſame is broken, yet if it be not in a judicial proceeding, it is not perjury, becauſe ſuch oaths are general and extrajudicial; but it ſerves for aggravation of the offence. Such are, general oaths given to officers or miniſters of juſtice, the oath of fealty and allegiance, and ſuch like. Thus if an officer commit extortion, it is againſt his general oath, but yet not perjury, becauſe not in a judicial proceeding; but when he is charged with extortion, the breach of his oath may ſerve for aggravation. 3 *Inſt.* 166.

If a perſon calleth another *perjured* man, he may have his action upon his caſe, becauſe it muſt be intended contrary to his oath in a judicial proceeding; but for calling him a *forſworn* man, no action doth lie, becauſe the forſwearing may be extrajudicial. 3 *Inſt.* 166.

Swears abſolutely] For the depoſition muſt be direct and abſolute; and not, as he thinketh, or remembreth, or believeth, or the like. 3 *Inſt.* 166.

In a matter material to the point in queſtion] For if it be not material, then tho' it be falſe, yet it is no perjury, becauſe it concerneth not the point in iſſue, and therefore in effect it is extrajudicial. 3 *Inſt.* 167.

But it is not neceſſary that it appear *to what degree*, the point in which a man is perjured, was material to the iſſue; for if it is but circumſtantially material, it will be perjury. L. *Raym.* 258.

Much leſs is it neceſſary that the evidence be ſufficient for the plaintiff to recover upon; for in the nature of the thing, an evidence may be very material, and yet it may not be full enough to prove directly the point in queſtion. L. *Raym.* 889.

Whether he be believed or not] It hath been holden, not to be material upon an indictment of perjury at common law, whether the falſe oath were at all credited, or whether the party in whoſe prejudice it was intended, were in the event any way aggrieved by it or not; inſomuch as this is not a proſecution grounded on the damage of the party, but on the abuſe of publick juſtice. 1 *Haw.* 177.

Subornation at common law.

2. Subornation of perjury, by the common law, ſeems to be *an offence, in procuring a man to to take a falſe oath, amounting to perjury, who actually taketh ſuch oath.* 1 Haw. 177.

But it ſeemeth clear, that if the perſon incited to take ſuch an oath, do not actually take it, the perſon by whom he was ſo incited is not guilty of ſubornation of perjury; yet it is certain, that he is liable to be puniſhed, not only by fine, but alſo by infamous corporal puniſhment. *id.*

Puniſhment of perjury and ſubornation by the common law.

3. The puniſhment of perjury, and ſubornation of perjury by the common law, is reſtrained by the ſtatute of the 5 *El.* hereafter following; that it ſhall not be leſs than is inflicted by that ſtatute.

Power of juſtices of the peace therein.

4. Mr. *Hawkins* ſays, it hath been of late ſettled, that juſtices of the peace have no juriſdiction over perjury at the common law; the principal reaſon of which reſolution, he ſays, as he apprehended, was, that inaſmuch as the chief end of the inſtitution of the office of theſe juſtices was, for the preſervation of the peace againſt perſonal wrongs and open violence, and the word *treſpaſs* (in the commiſſion) in its moſt proper and natural ſenſe, is taken for ſuch

kind of injuries, it ſhall be underſtood in that ſenſe only, or at the moſt to extend to ſuch other offences only, as have a direct and immediate tendency to cauſe ſuch breaches of the peace: as libels and ſuch like, which on this account have been adjudged indictable before juſtices of the peace. 2 *Haw.* 40.

And in the caſe of *K.* and *Bainton*, *E.* 11 *G.* 2. An indictment at the quarter ſeſſions for perjury at the common law, was quaſhed for want of juriſdiction; and was ſaid to have been done ſo about three years before, in the caſe of *K.* and *Weſtineſs*. Str. 1088.

II. Of perjury and ſubornation by the ſtatute of the 5 El.

Perjury and ſubornation on the 5 El. c. 9.

As to ſubornation of perjury, in the firſt place, *Every perſon who ſhall unlawfully and corruptly procure any witneſs to commit any wilful and corrupt perjury, in any matter or cauſe depending in ſuit and variance, by any writ, action, bill, complaint, or information, touching any lands, tenements, or hereditaments, or any goods, chattels, debts, or damages; in chancery, or in any court of record, leet, ancient demeſne court, hundred court, court baron, or court of ſtannery; or ſhall unlawfully and corruptly procure or ſuborn any witneſs which ſhall be ſworn to teſtify* in perpetuam rei memoriam, ——— *ſhall forfeit* 40l, *half to the king, and half to the party grieved who ſhall ſue for the ſame. And if he has not lands or goods worth* 40l, *he ſhall be impriſoned half a year, and ſtand on the pillory one whole hour in ſome market town next adjoining to the place where the offence was committed, in open market there, or in the market town itſelf where the offence was committed. And he ſhall be diſabled to be a witneſs in any court of record.*

And as to perjury, *If any perſon either by ſubornation or otherwiſe, ſhall wilfully and corruptly commit any wilful perjury, by his depoſition in any of the courts before mentioned, or being examined* ad perpetuam rei memoriam; *he ſhall forfeit* 20l *in like manner, and be impriſoned ſix months; and if he has not goods worth* 20l, *he ſhall be ſet on the pillory in ſome market place within the ſhire, city, or borough where the offence was committed, by the ſheriff or head officer reſpectively, and have both his ears nailed. And he ſhall be for ever diſabled to be a witneſs in any court of record.*

And *the judge of the court where the perjury ſhall be, and the judges of aſſize, and juſtices of the peace in ſeſſions, may inquire, hear, and determine thereof, by inquiſition, preſentment, bill, or information, or otherwiſe.*

But this act ſhall not extend to any eccleſiaſtical court.

Alſo this ſtatute ſhall not reſtrain the authority of any judge, having abſolute power to puniſh perjury before the making thereof, but that every ſuch judge may proceed in the puniſhment of all offences puniſhable before the making of the ſaid ſtatute, in ſuch wiſe as they might have done, and uſed to do, to all purpoſes, ſo that they ſet not upon the offender leſs puniſhment than is contained in the ſaid ſtatute. 5 El. c. 9.

Any witneſs] If the defendant perjureth himſelf in his anſwer, in the chancery, exchequer chamber, or the like, he is not puniſhable by this ſtatute; for it extendeth but to witneſſes. 3 *Inſt.* 166.

But he is puniſhable for the ſame by indictment at the common law. *Bur. Manſf.* 1189.

By any writ, action, bill, complaint, or information] It hath been reſolved, that theſe words are to be extended to the latter clauſe concerning perjury, as well as to this concerning ſubornation; becauſe it cannot well be intended, that the makers of the act, who inflict a greater penalty on ſubornation of perjury, than on the perjury itſelf, ſhould mean to extend the purview of the law in relation to what they eſteemed the leſſer crime, farther than in relation to that which they eſteemed the greater. 1 *Haw.* 179. 5 *Co.* 99.

But it is to be obſerved, that perjury or ſubornation in an action depending by *indictment*, are not within this ſtatute; but only in an action depending by *writ, action, bill, complaint, or information.* 3 Inſt. 164.

Half to the party grieved] It hath been collected from this clauſe, that no falſe oath is within the meaning of this ſtatute, which doth not give ſome perſon a juſt cauſe of complaint: And upon this ground it hath been ſaid, that he who ſwears a thing which is true, but not known by him to be ſo, is not within this ſtatute; becauſe howſoever heinous his offence may be in its own nature, yet when it proves in the event to be in maintenance of the truth, it cannot be ſaid to give him a juſt cauſe of complaint, who would take advantage againſt another from his want of legal evidence to make out the juſtice of his cauſe. Alſo from the ſame ground it ſeemeth clearly to follow, that no falſe oath can be within the ſtatute, unleſs the party againſt whom it was ſworn ſuffered ſome kind of diſadvantage by it; for otherwiſe it cannot be ſaid, that any one was grieved by it: And therefore that in every proſecution upon this ſtatute, if muſt appear upon the trial,

trial, that there was ſuch a ſuit depending, wherein the party might be prejudiced in the manner ſuppoſed. 1 *Haw.* 181.

Either by ſubornation or otherwiſe] It is not neceſſary to ſet forth in the indictment, whether the party took the falſe oath thro' the ſubornation of another, or without any ſuch ſubornation, theſe words being only ſuperfluity. 1 *Haw.* 179.

Wilfully and corruptly] Theſe words are neceſſary in an indictment or action on this ſtatute, and cannot be ſupplied by adding *againſt the form of the ſtatute*, or by concluding *and ſo a wilful and corrupt perjury did commit*. 1 Haw. 178.

Juſtices in ſeſſions] And one juſtice (Mr. *Dalton* ſays) may bind the offender over to the ſeſſions. *Dalt. c.* 70.

But becauſe the proſecution upon this ſtatute is more difficult than by indictment at the common law, offenders are ſeldom proſecuted upon this ſtatute, eſpecially at the ſeſſions; and it ſeems generally the ſafer way to proceed by indictment at the common law, at the aſſizes, or in the court of king's bench.

Shall not reſtrain] From this it ſeemeth undoubtedly to follow, that the court of king's bench, *&c.* proceeding upon an indictment or information of perjury or ſubornation of perjury at the common law, may not only ſet a diſcretionary fine on the offender, but alſo condemn him to the pillory, without making any inquiry concerning the value of his lands or goods. 1 *Haw.* 178.

III. Of matters common to them both.

Judges may direct proſecution for perjury.

1. The judge of aſſize (ſitting the court, or within 24 hours after) may direct any witneſs, if there ſhall appear to him a reaſonable cauſe, to be proſecuted for perjury; and may aſſign the party injured, or other perſon undertaking ſuch proſecution, counſel, who are to do their duty *gratis*: And ſuch proſecution ſo directed ſhall be carried on without any duty or fees whatſoever. And the clerk of aſſize, or other proper officer of the court, ſhall give *gratis* to the party injured, or proſecutor, a certificate of the ſame being directed, together with the names of the counſel aſſigned him: Which certificate ſhall be ſufficient proof of ſuch proſecution being directed; provided that no ſuch direction or certificate ſhall be given in evidence on the trial. 23 *G.* 2. *c.* 11. *ſ.* 3.

2. And in every information or indictment for wilful and corrupt *perjury*, it ſhall be ſufficient to ſet forth the ſubſtance of the offence, and by what court, or before whom the oath was taken (averring ſuch court or perſon to have a competent authority to adminiſter the ſame) together with the proper averment or averments to falſify the matter wherein the perjury is aſſigned, without ſetting forth any part of the record or proceedings either in law or equity (other than as aforeſaid,) or the authority of the court or perſon before whom the perjury was committed. 23 *G.* 2. *c.* 11. *ſ.* 1.

On proſecution for perjury, it ſhall be ſufficient to ſet forth the ſubſtance of the offence.

3. And in informations or indictments for *ſubornation* of perjury, or for corrupt bargaining or contracting with others to commit wilful and corrupt perjury, it ſhall be ſufficient to ſet forth the ſubſtance of the offence, without ſetting forth any part of the record or proceedings, or the commiſſion or authority of the court or perſon before whom the perjury was committed, or was agreed or promiſed to be committed. 23 *G.* 2. *c.* 11. *ſ.* 2.

Likewiſe on a proſecution for ſubornation.

4. The court generally will not quaſh an indictment for a crime of ſo enormous a nature as perjury, for inſufficiency in the caption or body of it, but will oblige the defendant either to plead or demur to it. 2 *Haw.* 258.

Inſufficient indictment not quaſhed without pleading or demurrer.

5. To convict a man of perjury, a probable evidence is not enough; but it muſt be a ſtrong and clear evidence, and the witneſſes muſt be more numerous than thoſe on the ſide of the defendant, for otherwiſe it is only oath againſt oath. 10 *Mod.* 194.

Evidence.

And the party prejudiced by the perjury, ſhall not be admitted to prove the perjury. *L. Raym.* 396.

6. And for a further puniſhment of perjury or ſubornation of perjury, it is enacted by the 2 *G.* 2. *c.* 25. (which act is made perpetual by the 9 *G.* 2. *c.* 18.) that beſides the puniſhment already inflicted, the judge may order the offender to be ſent to the houſe of correction, not exceeding 7 years, to be kept to hard labour; or otherwiſe to be tranſported for any term not exceeding 7 years.

Further puniſhment of perjury or ſubornation.

7. It ſeems that the court will not ordinarily at the prayer of the defendant grant a certiorari for the removal of an indictment of perjury; for ſuch crime deſerves all poſſible diſcountenance, and the certiorari might delay, if not wholly diſcourage the proſecution. 2 *Haw.* 287.

Certiorari.

8. A perſon convicted of perjury is diſabled from being a juror. 2 *Haw.* 417. Or a witneſs. 2 *Haw.* 433.

Perjured perſon not to be a juror or witneſs.

9. Quakers making ſolemn affirmation wilfully and corruptly, ſhall ſuffer as in caſes of perjury. 8 *G.* *c.* 6. *ſ.* 2.

Quakers.

Petition.

BY the 13 *C.* 2. *c.* 5. No perſon ſhall ſolicit above 20 hands, to any petition to the king, or either houſe of parliament, for alteration of matters eſtabliſhed by law in church or ſtate, unleſs the matter thereof hath been conſented to by three or more juſtices of the county, or by the major part of the grand jury at the aſſizes or ſeſſions; or if ariſing in *London*, by the lord mayor, aldermen, and common council; nor ſhall preſent any ſuch petition accompanied with more than ten perſons, on pain of a ſum not exceeding 100*l*, and three months impriſonment, on conviction at the aſſizes or ſeſſions in ſix months, and proved by two witneſſes.

But this ſhall not extend to debar any perſons (not above ten in number), to preſent any complaint to any member of parliament after his election, and during the continuance of parliament, or to the king, for any remedy to be thereupon had; nor to any addreſs to the king by the parliament.

Petit larceny. See **Larceny.**

Petit treaſon. See **Treaſon.**

Pewter and other metals.

Imported.

1. NO perſon ſhall buy, or take by exchange, (or otherwiſe take into or within this realm to the intent to ſell the ſame, 33 *H.* 8. *c.* 4. *ſ.* 7.) any wares made out of the realm, of tin or mixed with tin, as diſhes, ſawcers, flagons, ſpoons, or any other thing made of tin or pewter; on pain of forfeiting the ſame, and the value thereof, half to the king, and half to the finder. 25 *H.* 8. *c.* 9. *ſ.* 1.

And the maſter and wardens of the pewterers, and where there are none, the head officer of the town may appoint ſearchers, who may ſeize the ſame. *ſ.* 2.

And perſons interrupting or diſturbing the ſaid ſeizure ſhall forfeit 5*l*, half to the king, and half to him that ſhall ſue. 33 *H.* 8. *c.* 4. *ſ.* 8.

Fineneſs in making.

2. No perſon ſhall caſt or work any pewter veſſel or braſs, but that it be as good fine metal as the pewter and braſs wrought in *London*, and as by the ſtatutes of the ſame ought

ought to be; on pain of forfeiting the ſame, half to the king, and half to the finder. But this not to extend to braſs or pewter in the poſſeſſion of any perſon, other than the worker, or ſuch as have the ſame to ſell, and being of the crafts or miſteries. 19 *H.* 7. *c.* 6.

And no perſon ſhall make any hollow wares of pewter, to wit, ſalts and pots made of pewter called ley-metal, but after the aſſize of pewter and ley-metal within *London*; and the makers ſhall mark them with their own mark, that they may avow the ſame by them wrought; and the ſame not ſufficiently made and wrought, and not marked, found in the poſſeſſion of the maker or ſeller, ſhall be forfeited; and if the ſame be ſold, the maker ſhall forfeit the value thereof, half to the king, and half to the finder or ſearcher. *id.*

And the maſter and wardens of the craft of pewterers, and where there are none ſuch, the head and governors of the city or borough, may appoint ſearchers; and the juſtices at *Michaelmas* ſeſſions ſhall appoint two perſons, having experience therein, to ſearch within the county. And of all ſuch unlawful pewter or braſs as they ſhall find, half ſhall be to the king, and half to the ſearchers. *id.*

And in default of the maſter and wardens not ſearching, any perſon having ſufficient knowledge in the ſaid occupation, by overſight of the mayor or other head officer of cities or boroughs may ſearch. *id.*

3. If any untrue metal or workmanſhip of tin or pewter be found in any wares brought to be ſold, the mayor of *London*, and the maſter and wardens of the pewterers, may ſearch the ſame in the ſaid city; and in all other cities and towns where there are wardens, the mayors and wardens ſhall have like authority; and where there are no wardens, then the head officers of cities or towns ſhall appoint ſearchers; and if ſuch new wares wrought of tin and pewter be found defective, and in the poſſeſſion of the ſeller, the perſon putting them to ſale ſhall forfeit the ſame, half to the king, and half to the ſearcher or finder. 4 *H.* 8. *c.* 7. *ſ.* 7. Offering to ſale.

4. No perſon uſing the crafts of pewterer and brazier, ſhall ſell or change any pewter or braſs, at any place, but only in open fair or market, or in his own dwelling houſe, except he be deſired by the buyer of ſuch ware; on pain of 10 l, half to the king, and half to him who ſhall ſeize or ſue. 19 *H.* 7. *c.* 6. 25 *H.* 8. *c.* 9. *ſ.* 6. Selling, where.

5. Perſons uſing the buying and ſelling of pewter, or braſs, who ſhall occupy any falſe beams or weights, and every False weights.

every perſon uſing the ſame, ſhall forfeit 20 s, half to the king, and half to him that ſhall ſue; and alſo the beams to him that ſhall ſeize them. 19 *H.* 7. *c.* 6.

And if the offender be not ſufficient to pay the forfeiture, the mayor, or other head officer, where he ſhall be found, ſhall put him in the ſtocks, and ſo keep him till the next market day next adjoining, and in the market place put him in the pillory all the market time. *id.*

Exporting.

6. No perſon ſhall carry over ſea, any braſs, copper, latten, bell metal, pan metal, gun metal, nor ſhroff metal, whether it be clean or mixed (tin and lead only excepted); on pain of forfeiting double the value thereof (and 10*l* for every thouſand weight, 2 & 3 *Ed.* 6. *c.* 37.) half to the king, and half to him that ſhall ſue. 33 *H.* 8. *c.* 7.

Pheaſants. See Game.

Phyſicians.

Recuſants not to practiſe phyſick.

1. NO recuſant convict ſhall practiſe phyſick, nor uſe the trade of an apothecary, on pain of 100*l.* 3 *J.* *c.* 5. *ſ.* 8.

Apothecary exempted from offices.

2. Apothecaries within *London* and ſeven miles thereof, and alſo apothecaries in any other place who have ſerved ſeven years apprenticeſhip, ſhall be exempted from the office of conſtable, ſcavenger, overſeer of the poor, and all other pariſh, ward, and leet offices, and from being put on any jury or inqueſt. 6 *W.* *c.* 4.

Surgeons exempted from offices.

3. By the 5 *H.* 8. *c.* 6. Surgeons ſhall be diſcharged of the conſtableſhip, watch, and all manner of office bearing any armour, and alſo of all inqueſt and juries *within London*.

And by the 18 *G.* 2. *c.* 15. All freemen of the ſurgeons company in *London*, ſhall be exempted from the office of conſtable, ſcavenger, overſeer of the poor, and other pariſh, ward, and leet offices, and from ſerving on juries and inqueſts. *ſ.* 10.

And Mr. *Hawkins*, ſpeaking of the former of theſe ſtatutes, ſays, it ſeems that by the equity thereof, and the ancient cuſtom of the realm, *all* ſurgeons have been allowed the like privilege; that is, whether in *London* or elſewhere. 2 *Haw.* 64.

Phyſicians exempted from offices.

4. By the 32 *H.* 8. *c.* 40. The preſident of the commonalty and fellowſhip of the faculty of phyſick in *London*, and the commons and fellows of the ſame, ſhall be diſcharged

charged of watch and ward there, and ſhall not be choſen conſtable, or any other officer. *ſ.* 1.

Yet it ſeems to have been holden, that the equity of this act, doth not extend to other phyſicians not mentioned in it; perhaps for this reaſon, becauſe phyſicians have no ſuch ſpecial cuſtom for their diſcharge, as ſurgeons are ſaid to have. 2 *Haw.* 64.

And it ſeemeth that a practiſing phyſician, being choſen conſtable in purſuance of a cuſtom in reſpect of his lands in a town, has no remedy for his diſcharge; for that there are no precedents of this kind, and his calling is private; yet if he be choſen conſtable of a town, which hath ſufficient perſons beſides to execute this office, and no ſpecial cuſtom concerning it, perhaps he may be relieved by the king's bench. 2 *Haw.* 63.

Searching for drugs.

5. All juſtices, mayors, ſheriffs, bailiffs, conſtables, and other officers in *London*, ſhall aſſiſt the preſident of the college of phyſicians, and perſons by them authorized, in ſearching for faulty apothecary wares. 1 *Mar. ſeſſ.* 2. *c.* 9. *ſ.* 6.

Phyſician killing a patient.

6. If a phyſician gives a perſon a potion without any intent of doing him any bodily hurt, but with intent to cure or prevent a diſeaſe, and contrary to the expectation of the phyſician it kills him, this is no homicide; and the like of a ſurgeon. And I hold their opinion (ſays lord *Hale*) to be erroneous, that think if he be no licenſed ſurgeon or phyſician, that occaſioned this miſchance, that then it is felony; for phyſick and ſalves were before licenſed phyſicians and ſurgeons; and therefore if they be not licenſed according to the ſtatute of the 3 *H.* 8. *c.* 11. or 14 *H.* 8. *c.* 5. they are ſubject to the penalties in the ſtatutes; but God forbid that any miſchance of this kind ſhould make any perſon not licenſed guilty of murder or manſlaughter. Theſe opinions therefore may ſerve to caution ignorant people not to be too buſy in this kind in tampering with phyſick, but are no ſafe rule for a judge or jury to go by. 1 *H. H.* 429.

Pickpocket. See Larceny.

Pigeons. See Game.

Pillory and tumbrel.

Pillory and tumbrel, what.

1. PILLORY (in Latin, *colliſtrigium*, from the perſon's neck being put between two boards) is a very ancient puniſhment in this kingdom, and was uſed heretofore by the *Saxons*. 3 *Inſt.* 219.

The word *pill* is common to all the *European* languages, and ſignifies to ſpoil, plunder, or (as we ſay) to *pillage*. And *pillory* (which we have immediately from the *French pillieurie*) hath been improperly applied to denote the mode of puniſhment, whereas it ſignifies the *offence*, as *pilleur* ſignifies the offender. *Barringt.* 30.

The *tumbrel* ſeemeth to have been anciently the ſame with the *ducking ſtool*; an engine for the puniſhment of ſcolding women, by ducking them over head and ears in water, and eſpecially in muddy or ſtinking water, according to the etymology of lord *Coke*, who tells us, that the word *tumbrel* ſignifieth a dung cart. *Lamb.* 61. 3 *Inſt.* 219.

Who ſhall find them.

2. Every one that hath a leet or market, ought to have a pillory and tumbrel to puniſh offenders; and it ſeems that a leet may be forfeited for not taking care to have a pillory and tumbrel. 3 *Inſt.* 219. 2 *Haw.* 75.

Infamy of the puniſhment.

3. They that have been adjudged to the pillory or tumbrel, are ſo infamous, that they ſhall not be received to be jurors or witneſſes. 3 *Inſt.* 219.

Caution in inflicting it.

4. And for that the judgment to the pillory or tumbrel doth make the delinquent infamous, the juſtices of the peace ſhould be well adviſed before they give judgment of any perſon to the pillory or tumbrel, unleſs they have good warrant for that judgment therein. Fine and impriſonment, for offences fineable by them, is a fair and ſure way. 3 *Inſt.* 219.

Inflicted by ſeveral ſtatutes.

5. But by ſeveral ſtatutes the puniſhment of the pillory is ſpecially ordained; in which caſes the directions of the ſaid ſtatutes reſpectively are to be obſerved.

Plague.

1. ALL veſſels, perſons, and goods coming from any place, from whence the king, with the advice of his privy council, ſhall judge it probable that the infection may be brought, ſhall be obliged to make their quarentine in ſuch places, for ſuch time, and in ſuch manner as ſhall be directed by him, or by his order made in council, and notified by proclamation, or publiſhed in the gazette. 26 *G.* 2. *c.* 6. *ſ.* 1. Quarentine enjoined.

2. And when the king ſhall make any orders concerning quarentine, and notify the ſame by proclamation, or in the gazette, the ſame ſhall be publickly read the next *ſunday*, and the firſt *ſunday* in every month afterwards (during the time ſuch orders ſhall continue) immediately after prayers, in all places ſet apart for divine worſhip, within ſuch places as ſhall be ſpecified in ſuch proclamation or orders. *id. ſ.* 20. Orders for quarentine to be read in churches.

3. And the juſtices of the counties adjoining, or one of them, ſhall forthwith, when quarentine ſhall be appointed, cauſe watches to be kept by day and night, in the moſt proper and convenient places, within the ſeveral adjacent pariſhes; who ſhall not permit any perſon whatſoever to come on ſhore from, or go on board any ſhips under quarentine, except only ſuch as ſhall have the charge of ſeeing the quarentine duly performed, or as ſhall be licenſed by ſuch perſon having charge of the quarentine. 9 *An. c.* 2. Watchmen to be appointed.

And if any ſuperintendant of the quarentine, or watchman, ſhall neglect his duty, he ſhall be guilty of felony without benefit of clergy. 26 *G.* 2. *c.* 6. *ſ.* 17.

4. And if the plague ſhall appear on board any ſhip, being to the northward of *Cape Finiſterre*, the maſter ſhall immediately proceed to the harbour of [*St. Helen's Pool*, between the uninhabited iſlands of *St. Helen's Tean*, and *North Withell*, or to ſuch other place as his majeſty by advice of his privy council ſhall appoint; 29 *G.* 2. *c.* 8.] where he ſhall make known his caſe to ſome officer of the cuſtoms; who ſhall immediately acquaint ſome cuſtom-houſe officer of ſome near port of *England*; who ſhall with all poſſible ſpeed ſend intelligence thereof to a ſecretary of ſtate, and the ſhip ſhall remain there till his majeſty's pleaſure be known; nor ſhall any of the crew go on ſhore. Maſters of ſhips to give notice.

But if he ſhall not be able to make the iſlands of *Scilly*, or ſhall be forced by weather or otherwiſe to go up either of the channels, he ſhall not enter any port, but remain

in ſome open road, till he receives orders from his majeſty or his privy council; and ſhall prevent any of the crew from going out of the ſhip, and avoid all intercourſe with other ſhips or perſons. And the ſaid maſter or any other perſon on board, who ſhall be diſobedient herein, ſhall be guilty of felony without benefit of clergy; and may be tried where the offence ſhall be committed, or where he ſhall be apprehended. 26 *G.* 2. *c.* 6. *ſ.* 2.

Veſſels to be examined.

5. And when any country or place is infected, or when any order ſhall be made by the king concerning quarentine, as often as any veſſel ſhall attempt to enter into any port, the principal officer of the cuſtoms there, or ſuch perſon as ſhall be authorized to ſee quarentine performed, ſhall go off, or cauſe ſome other perſon to go off, to ſuch veſſel; who ſhall at a convenient diſtance, demand of the commander, the name of the ſhip; the name of the commander; at what place the cargo was taken on board; what place the veſſel touched at in her voyage; whether ſuch places, or any, and which, were infected with the plague; how long ſhe hath been in her paſſage; how many perſons were on board when ſhe ſet ſail; whether any, and what perſons, during the voyage, have been or are infected; how many died in the voyage, and of what diſtemper; what veſſels he, or any of his company with his privity, went on board, or had any of their company come on board his ſhip, and to what place they belonged; and alſo the true contents of his lading, to the beſt of his knowledge: And if it ſhall appear on ſuch examination, or otherwiſe, that any perſon on board is infected, or that ſuch ſhip is obliged to perform quarentine; the officers of any of his majeſty's ſhips of war, or of any forts or garriſons, and all other his majeſty's officers whom it may concern, and others whom they ſhall call to their aſſiſtance, ſhall, on notice thereof, oblige ſuch ſhip to repair to the place appointed for quarentine, be it by firing of guns, or other force: And if ſuch veſſel ſhall come from any place infected, or have any perſon on board infected, and the maſter ſhall conceal the ſame, he ſhall be guilty of felony without benefit of clergy; and if he ſhall not make a true diſcovery in any other of the particulars, he ſhall forfeit 200 l, half to the king, and half to him that ſhall ſue. 26 *G.* 2. *c.* 6. *ſ.* 3.

Officer neglecting.

And if any officer of the cuſtoms, or other officer, ſhall neglect his duty herein; he ſhall forfeit his office and 100 l in like manner. 26 *G.* 2. *c.* 6. *ſ.* 11.

Maſter to deliver his credentials.

7. And the maſter, after his arrival at the place of quarentine, ſhall deliver on demand to the chief officer appointed to ſee quarentine duly performed, ſuch bill of health

and manifeſt as he ſhall have received from any *Britiſh* conſul, together with his log-book and journal; on pain of 500l in like manner. 26 *G.* 2. *c.* 6. *ſ.* 4.

8. And all perſons, liable to perform quarentine, ſhall be ſubject to ſuch orders as they ſhall receive from the officer authorized to ſee it performed; who ſhall have power to inforce obedience, and in caſe of neceſſity to call others to their aſſiſtance. 26 *G.* 2. *c.* 6. *ſ.* 9. Obedience inforced.

9. And any officer of the cuſtoms, or others, directed to take care of the quarentine, may ſeize any boat belonging to ſuch veſſel, and detain the ſame till quarentine be performed. 9 *An.* *c.* 2. Ships boats may be ſeized.

10. And if the commander of the ſhip ſhall go himſelf, or permit any ſeaman or paſſenger to go on ſhore, or on board any other veſſel, during the quarentine, without licence of the perſon having charge of the quarentine; the ſhip and tackle ſhall be forfeited to the king. 9 *An.* *c.* 2. Penalty of quitting the ſhip.

And if any perſon ſhall come on ſhore, or go aboard any other ſhip; the perſons appointed for ſeeing quarentine duly performed, may compel him to return and continue during the quarentine: And ſuch perſon ſo leaving ſuch ſhip, and being thereof (after expiration of the quarentine) convicted by oath of one witneſs, before one juſtice near, ſhall forfeit not exceeding 20l, to be paid immediately to ſuch juſtice, who may reward the informer thereout not exceeding a third part, and pay the remainder (charges deducted) to the poor of the pariſh where the conviction ſhall be; and in default of payment, he may commit him to the houſe of correction, to be kept to hard labour not exceeding one month. 9 *An.* *c.* 2.

And by the 26 *G.* 2. *c.* 6. If the maſter ſhall quit, or knowingly permit any perſon to quit the ſhip, by going on ſhore, or on board any other veſſel, before the quarentine ſhall be performed, unleſs in ſuch caſes as ſhall be permitted by the orders concerning quarentine; or if he ſhall not, in convenient time after notice, cauſe the veſſel and lading to be conveyed to the place appointed for quarentine, he ſhall forfeit 500l, half to the king, and half to him that ſhall ſue: And if any perſon ſhall ſo quit ſuch ſhip, all perſons by any kind of force may compel him to return; and he ſhall for ſuch offence be impriſoned ſix months, and forfeit 200l, half to the king, and half to him that ſhall ſue. *ſ.* 5.

11. And if any perſon ſhall go on board, and return from any ſhip, during the quarentine, without ſuch licence; he may be compelled by the perſons appointed as aforeſaid, to return and continue on board during ſuch Perſons going aboard.

quarentine; and the maſter of ſuch ſhip ſhall there keep and maintain him. 9 *An. c.* 2.

In what caſe ſmall veſſels ſhall not be allowed to ſail.

12. When any part of *Great Britain*, *Ireland*, *Guernſey*, *Jerſey*, *Alderney*, *Sark*, or *Man*, *France*, *Spain*, *Portugal*, or the low countries ſhall be infected, the king by proclamation may prohibit all ſmall boats and veſſels under the burden of 20 tons, from ſailing out of port, till ſecurity be firſt given by the maſter, to the ſatisfaction of the principal officer of the cuſtoms, or chief magiſtrate of the port, by bond to the king with ſureties, in the penalty of 300 l, that he ſhall not go to or touch at any place mentioned in the proclamation; and that the maſter and every mariner and paſſenger ſhall, during the time aforeſaid, not go on board any other veſſel at ſea; and that he ſhall not permit any perſon to come on board ſuch boat or veſſel at ſea; and ſhall not receive any goods out of any other veſſel; for which bond no fee ſhall be taken. And if ſuch boat or veſſel ſhall ſail before ſuch ſecurity given, the ſame, together with the tackle and furniture, ſhall be forfeited to the king; and the maſter and every mariner therein, being thereof convicted, on his appearance or default, on oath of one witneſs, by one juſtice where the offender ſhall be found, ſhall forfeit 20 l, half to the informer, and half to the poor of the pariſh where the offender ſhall be found, by diſtreſs; and for want of ſufficient diſtreſs to be committed to priſon for three months. 26 *G.* 2. *c.* 6. *ſ.* 19.

Lazarets to be appointed.

13. Whenever the king, with the advice and conſent of parliament, ſhall direct lazarets to be provided, for receiving of perſons obliged to perform quarentine, or for airing of goods, it ſhall be lawful to erect the ſame, either in any waſte grounds or commons, or where there are not ſufficient, in the ſeveral grounds of any perſon whatſoever, not being a houſe, park, garden, orchard, yard, or planted walk, or avenue to a houſe, paying for the ſame as ſhall be agreed on between the perſons intereſted, and any two perſons appointed by the king under his ſign manual; and if they cannot agree, then the ſaid two perſons ſhall, 30 days before the ſeſſions, give to the occupier a notice in writing, deſcribing the quantity of ground, and purporting that the conſideration for the ſame will be ſettled by a jury at ſuch ſeſſions. And the juſtices there, on proof of ſuch notice ſhall charge the jury which ſhall attend there (or ſome other jury to be then and there impanelled and returned by the ſheriff without fee) and cauſe to be ſworn, well and truly to aſſeſs the value of ſuch grounds, to whom the parties may have their lawful challenges; and the verdict

dict of the ſaid jury, and the judgment of the juſtices thereupon ſhall be concluſive, and finally bind all parties; and thereupon the king ſhall hold ſuch grounds for ſuch term as he ſhall judge neceſſary, paying for the ſame ſuch rent or other conſideration as ſhall be ſo aſſeſſed. 26 *G.* 2. *c.* 6. *ſ.* 6. And by the 12 *G.* 3. *c.* 57. the lords of the treaſury may contract for an abſolute purchaſe of ſuch lands, meſſuages, and tenements, to be veſted in the crown unalienably: And if the parties cannot agree, the price ſhall be ſettled at the ſeſſions as aforeſaid, on giving like notice to the owner.

And the officers authorized to put in execution ſuch orders as aforeſaid, ſhall cauſe all perſons obliged to perform quarentine, and all goods comprized in ſuch orders, to repair or be conveyed to ſome of the ſaid lazarets, or to ſuch other places as ſhall be provided according to ſuch orders. 26 *G.* 2. *c.* 6. *ſ.* 7.

And if any perſon ſhall refuſe or neglect to repair, within convenient time after notice, to the lazaret or other place appointed, or ſhall eſcape or attempt to eſcape from thence, before quarentine performed; the watchmen, and other perſons appointed to ſee quarentine performed, by force may compel him to repair or return thither: and every perſon ſo refuſing or neglecting to repair thither, and alſo every perſon actually eſcaping, ſhall be guilty of felony without benefit of clergy. *id. ſ.* 8.

Perſons entering lazarets, not to return till quarentine performed.

14. And if any perſon not infected, nor liable to perform quarentine, ſhall enter any lazaret, or other ſuch place, and ſhall return or attempt to return, unleſs as permitted by ſuch orders; the watchmen, or other perſons appointed, by force may compel him to return and perform quarentine: and if he ſhall actually eſcape before he hath performed the ſame, he ſhall be guilty of felony without benefit of clergy. *id. ſ.* 10.

Aſſeſſment for relief of perſons infected.

15. And the mayor, head officers, and juſtices of the peace of every city, borough, town corporate, and places privileged, or any two of them, may aſſeſs every inhabitant, and all houſes of habitation, lands, tenements, and hereditaments, for the reaſonable relief of perſons infected with the plague, or inhabiting in infected houſes, and levy the ſame by warrant; and if the party to whom the warrant is directed ſhall not find any goods to levy the ſame, then upon return thereof, they ſhall by warrant cauſe the perſon to be arreſted, and committed to gaol till he ſhall pay. 1 *J. c.* 31. *ſ.* 2, 3.

And if the inhabitants of ſuch place ſhall find themſelves unable to relieve all ſuch perſons, then on certificate there-

of by the ſaid magiſtrates or two of them, to the juſtices of the county of or near the ſaid city or other place, or to two of them, they may tax the inhabitants of the county within five miles of the place infected, at ſuch weekly ſums as they ſhall think reaſonable, to be levied by their warrant by ſale of goods, and in default thereof, by impriſonment as aforeſaid. *id. ſ.* 4.

And if the infection ſhall be in a town where there are no juſtices, or in a village or hamlet; then two juſtices of the county may aſſeſs the inhabitants of the county, within five miles of the place infected, at ſuch weekly ſums as they ſhall think fit, for the reaſonable relief of perſons infected; to be levied by their warrant by ſale of goods, and in default thereof by impriſonment as aforeſaid. *ſ.* 5.

All which ſaid taxes ſhall be certified at the next quarter ſeſſions, for ſuch town or county reſpectively; and there they may order the ſame to continue, or be enlarged or extended to any other part of the county, or otherwiſe determined. *ſ.* 6.

Officer making default in levying the ſame, ſhall forfeit 10s, to be employed to the charitable uſes aforeſaid. *ſ.* 6. But it is not ſaid how this penalty ſhall be levied.

Searchers for places infected.

16. And the juſtices, mayors, and other head officers, may appoint within their limits ſearchers, watchmen, examiners, keepers, and buriers for the places infected; and give them directions, and ſwear them for the performance thereof. 1 *J. c.* 31. *ſ.* 9.

Secreting goods under quarentine.

17. If any perſon ſhall conceal from the officers of quarentine, or convey any letters or goods from any ſhip under quarentine, or from any lazaret; he ſhall be guilty of felony without benefit of clergy. 26 *G.* 2. *c.* 6. *ſ.* 18.

Damaging goods.

18. If any officer or other perſon ſhall imbezil or damage any goods performing quarentine, he ſhall pay treble damages with full coſts. 26 *G.* 2. *c.* 6. *ſ.* 11.

Diſcharge after quarentine performed.

19. After quarentine performed, and on proof thereof by the oaths of the maſter and two other perſons of the ſhip, or by the oaths of two credible witneſſes before the cuſtomer, comptroller, or collector of that or the next port, or their deputies, or a juſtice near, and that the *veſſel* and every ſuch *perſon* are free from infection; and after producing a certificate thereof ſigned by the chief officer who ſuperintended the quarentine; ſuch officer of the cuſtoms, together with the ſaid juſtice, ſhall give a certificate thereof *(gratis)*, and thereupon the veſſel and every ſuch perſon ſhall be liable to no farther reſtraint. 26 *G.* 2. *c.* 6. *ſ.* 13, 14.

And

And all goods liable to quarentine ſhall be opened and aired, as by ſuch orders ſhall be directed; and after ſuch order hath been complied with, and a certificate thereof given by the chief officer appointed to ſuperintend the quarentine and airing of ſuch goods, and proof made thereof by the oaths of two witneſſes, before the cuſtomer, comptroller, or collector of the next port, or any of their deputies, or any juſtice living near; on certificate and return of ſuch proof by ſuch cuſtomhouſe officer to the commiſſioners of the cuſtoms, they or two of them by their order ſhall diſcharge the ſame. *ſ.* 15.

And if any perſon ſhall take any fee for ſuch oath, order, or certificate; he ſhall forfeit 100l, half to the king, and half to him that ſhall ſue. *ſ.* 16.

And if any ſuperintendant of the quarentine, or watchman, ſhall in ſuch caſe give a falſe certificate; he ſhall be guilty of felony without benefit of clergy. *ſ.* 17.

Note; the abovementioned act of the 9 *An.* was repealed by the 7 *G. ſt.* 1. *c.* 3. but was revived by the 8 *G. c.* 8. which enacts, that neither the ſaid ſtatute of the 7 *G.* nor any thing therein contained, ſhall continue in force longer than *Mar.* 25, 1723.

Players.

1. EVERY perſon who ſhall for hire, gain, or reward, act, or cauſe to be acted, any play or other entertainment of the ſtage, or any part therein, if he ſhall have no legal ſettlement where he acts, without authority from the king or the lord chamberlain, ſhall be deemed a rogue and vagabond within the 12 *An.* (which act is repealed; but the ſame is re-enacted by the 17 *G.* 2. *c.* 5.) 10 *G.* 2. *c.* 28. *ſ.* 1.

Or otherwiſe he ſhall forfeit 50l; in which caſe he ſhall not alſo ſuffer as a vagrant. *ſ.* 2.

2. And if any play, or part thereof, be acted in any place where wine, ale, beer or other liquors ſhall be ſold, the ſame ſhall be deemed to be acted for *gain*, *hire*, and *reward*. ſ. 7.

3. And no perſon ſhall for hire, gain, or reward, act or cauſe to be acted any new play, or any part therein, or any new part added to an old play, or any new prologue or epilogue, unleſs a true copy thereof be ſent to the lord chamberlain, 14 days before the acting, together with an

account when and where it is intended to be acted, ſigned by one of the managers. *ſ.* 3.

And the lord chamberlain may prohibit the ſame as he thinks fit; and if any perſon ſhall act without ſuch copy being ſent, or againſt ſuch prohibition, he ſhall forfeit 50l, and the licence of the playhouſe ſhall be void. *ſ.* 4.

4. And no perſon ſhall be authorized to act, except within the liberties of the city of *Weſtminſter*, and where the king ſhall reſide. *ſ.* 5.

5. All the ſaid pecuniary penalties may be recovered in the courts at *Weſtminſter*; or before two juſtices, by the oath of one witneſs, or confeſſion, to be levied by diſtreſs; and for want of ſufficient diſtreſs, the offender to be committed to the houſe of correction, not exceeding ſix months, to be kept to hard labour; or to the common gaol, not exceeding ſix months, without bail or mainprize: Perſons aggrieved by order of the juſtices may appeal to the next ſeſſions: The ſaid penalties to be diſtributed, half to the informer, and half to the poor. *ſ.* 6.

But by ſpecial acts of parliament playhouſes are permitted to be erected in particular places.

Plate. See Excise.

Poiſon. See Homicide.

Polygamy.

BIGAMY is, where a man has two wives ſucceſſively; Polygamy, where he hath ſeveral wives at the ſame time: but they are commonly confounded one with the other.

By the 1 *Ja. c.* 11. *If any perſon within his majeſty's dominions of* England *and* Wales, *being married, ſhall marry any perſon, the former huſband or wife being alive; every ſuch offence ſhall be felony, and the perſon ſo offending ſhall ſuffer death as in caſes of felony; and ſhall be tried in the county where he or ſhe was apprehended, as if the offence had been committed in ſuch county.*

Provided, that this ſhall not extend to any perſon, whoſe huſband or wife ſhall be continually remaining beyond the ſeas for ſeven years together:

Or whoſe huſband or wife ſhall abſent him or herſelf the one from the other, for ſeven years together, in any part within his majeſty's

majeſty's dominions, the one of them not knowing the other to be living within that time:

Provided alſo, that this ſhall not extend to any perſon that ſhall be at the time of ſuch marriage divorced by any ſentence in the eccleſiaſtical court:

Or to any perſon where the former marriage hath been by ſentence in the eccleſiaſtical court declared to be void and of no effect:

Nor to any perſon by reaſon of any former marriage had or made within age of conſent.

Provided alſo, that no attainder for this offence made felony by this act, ſhall work any corruption of blood, loſs of dower, or diſinheriſon of heirs.

If any perſon within his majeſty's dominions of England *and* Wales] If the firſt marriage was beyond ſea, and the latter in England, the party may be indicted here, becauſe the latter marriage makes the offence; but if the firſt marriage was in England, and the latter beyond ſea, it ſeemeth that the offender cannot be indicted here, becauſe the offence was not within the kingdom. *Kely.* 79, 80.

Being married] This extends to a marriage *de facto*, or voidable by reaſon of conſanguinity, affinity, or ſuch like; for it is a marriage in judgment of law until it be avoided; and therefore, though neither marriage be *de jure*, yet they are within this ſtatute. 3 *Inſt.* 88.

But there muſt be actual proof of the marriage; for in this caſe the circumſtances of cohabitation and reputation are not ſufficient. *Bur. Mansf.* 2057.

Shall marry any perſon, the former huſband or wife being alive] If a man marrieth a wife, and then marrieth another the former wife being living, and then ſuch firſt wife dying he marrieth a third the ſecond wife being living; this marrying of the third is not felony, becauſe the marriage with ſuch ſecond wife was merely void: but otherwiſe it would have been if he had married the third, the firſt and true wife being living. 1 *H. H.* 693.

Every ſuch offence ſhall be felony] And ſuch ſecond marriage is merely void. 3 *Inſt.* 88.

And the perſon ſo offending ſhall ſuffer death as in caſes of felony] Yet he ſhall have the benefit of clergy; the ſame being not excluded by expreſs words. 3 *Inſt.* 89.

And

And ſhall be tried] The firſt and true wife is not to be allowed as a witneſs againſt the huſband; but it ſeemeth clear, that the ſecond wife may be admitted to prove the ſecond marriage, being not ſo much as his wife *de facto*. 1 *H. H.* 693.

In the county where he or ſhe was apprehended] This is added only *cumulativè*; for he may be indicted where the ſecond marriage was, though he be never apprehended; and ſo be proceeded againſt to outlawry. 1 *H. H.* 694.

Shall not extend to any perſon, whoſe huſband or wife ſhall be continually remaining beyond the ſeas for ſeven years together] And in this caſe notice that he or ſhe is living, is not material, in reſpect to the commorancy beyond ſea. 3 *Inſt.* 88.

Beyond the ſeas] And this, although it be within the king's dominions; as in New England, or Ireland. 1 *H. H.* 693.

Or whoſe huſband or wife ſhall abſent him or herſelf the one from the other, for ſeven years together, in any part within his majeſty's dominions, the one of them not knowing the other to be living within that time] So that in this caſe notice is material, and makes the offence. 3 *Inſt.* 88.

Shall not extend to any perſon that ſhall be at the time of ſuch marriage divorced by any ſentence in the eccleſiaſtical court] And this is intended a divorce not *a vinculo matrimonii*, for then without the aid of any proviſo either may freely marry; but it muſt be intended of divorces *a menſa et thoro*. 1 *H. H.* 694.

Nor to any perſon by reaſon of any former marriage had or made within the age of conſent] If the man be above fourteen and the wife under twelve, or if the wife be above twelve and the man under fourteen, yet may the huſband or wife ſo above the age of conſent diſagree to the eſpouſals, as well as the party that is under the age of conſent; for the advantage of diſagreement muſt be reciprocal. And ſo it was reſolved by the judges and civilians, *T.* 42 *Eliz.* in the King's Bench, in a writ of error between *Babington* and *Warner*. So as if either party be within age of conſent, it is no former marriage within this act. 3 *Inſt.* 89.

Pond. See Game.

Poor.

CONCERNING the binding and ordering of parish and other apprentices, see title Apprentices.

Concerning the filiation and maintenance of bastard children, see title Bastards.

Concerning the ordering of servants, and other workmen and labourers, see title Servants.

For these do fall in with this title, no further than as they happen to become poor: Upon which account, their settlements are here treated of; but nothing otherwise in particular concerning them.

It is to be noted in this place, that the statute of 22 *G.* 3. *c.* 83. establishes many new regulations with regard to the maintenance of the poor; but as that statute leaves it optional in any parish or other place whether they will adopt these regulations or continue in the present mode, it is judged requisite for the present to preserve this title unaltered, further than by inserting at the end of it an account of the said statute of 22 *G.* 3. which being, as it were, in its probationary state, remains as the subject of future consideration.

Of this extensive title, it is proposed to treat in the following order: That is to say,

I. Concerning the appointment of overseers, with their duty thereupon.

II. Of settlements.

III. Of removals.

IV. Of the poor rate, and other helps towards their relief.

V. Of the relief and ordering of the poor.

VI. Of the Overseers account.

VII. Penalty of overseers for the neglect of their duty.

VIII. Indemnity of overseers in the performance of their duty.

I. Ap-

I. Appointment of Overſeers, with their duty thereupon.

Appointment of overſeers in pariſhes and townſhips.

1. Anciently, the maintenance of the poor was chiefly an eccleſiaſtical concern. A fourth part of the tithes in every pariſh was ſet apart for that purpoſe. The miniſter, under the biſhop, had the principal direction in the diſpoſal thereof, aſſiſted by the churchwardens and other principal inhabitants. Hence naturally became eſtabliſhed the parochial ſettlement. Afterwards, when the tithes of many of the pariſhes became appropriated to the monaſteries, thoſe ſocieties had ſome ſhare likewiſe (by reaſon of the ſaid tithes, and other donations for that purpoſe) in the relief of the poor. And the reſt was made up by voluntary contributions.——By the ſtatute of the 27 *H.* 8. *c.* 25. The *churchwardens*, or *two other* of every pariſh, were to make *collections* for the poor, on ſundays.—By the 5 & 6 *Ed.* 6. *c.* 2. The *miniſter and churchwardens* were annually to appoint *two able perſons or more* to be *gatherers and collectors* of alms for the poor.——By the 5 *El. c.* 3. The *pariſhioners* were to chuſe the ſaid *collectors and gatherers* for the poor.—By the 14 *El. c.* 5. The *juſtices* were to appoint *collectors* for the poor within every pariſh; and were alſo to appoint the overſeer of the poor, whoſe office was nearly the ſame as it is at preſent, except only for collecting the money, which was done by the aforeſaid *gatherers* or *collectors*.——By the 18 *El. c.* 3. The juſtices were to appoint *collectors* and governors of the poor.——By the 39 *El. c.* 3. The *churchwardens* of every pariſh, and four *ſubſtantial houſholders* there, being ſubſidy men, or for want of ſubſidy men, four other ſubſtantial houſholders, to be nominated yearly in *Eaſter* week by two juſtices (1 Q.) were to be called *overſeers of the poor* of the ſame pariſh.——And ſo it continues with ſome ſmall variation, by the ſtatute of the 43 *El. c.* 2. as followeth:

The churchwardens of every pariſh, and four, three, or two ſubſtantial houſholders there, as ſhall be thought meet, having reſpect to the greatneſs of the pariſh, to be nominated yearly in Eaſter *week, or within one month after* Eaſter, *under the hand or ſeal of two or more juſtices of the peace in the ſame county, whereof one to be of the* quorum, *dwelling in or near the pariſh or diviſion, ſhall be called overſeers of the poor of the ſame pariſh.* 43 El. c. 2. ſ. 1.

And by the 13 & 14 *C.* 2. *c.* 12. *Whereas the Inhabitants of* Lancaſhire, Cheſhire, Derbyſhire, Yorkſhire, North-

Northumberland, *the biſhoprick of* Durham, Cumberland, *and* Weſtmoreland, *and many other counties in* England *and* Wales, *by reaſon of the largeneſs of the pariſhes, cannot reap the benefit of the ſaid act of the* 43 El. *it is enacted, that all and every the poor, needy, impotent, and lame perſons, within every townſhip or village within the ſeveral counties aforeſaid, ſhall be maintained, provided for, and ſet on work, within the ſeveral and reſpective townſhip and village, wherein he ſhall inhabit, or wherein he was laſt lawfully ſettled; and there ſhall be yearly choſen and appointed two or more overſeers, within every of the ſaid townſhips or villages reſpectively.* ſ. 21.

And by the 17 *G.* 2. *c.* 38. *In every townſhip or place where there are no churchwardens, the overſeers alone may act in all reſpects, as churchwardens and overſeers may do in other places, by virtue of this or any former act.* ſ. 15.

And *if any overſeer ſhall die, or remove, or become inſolvent, before the expiration of his office, two juſtices (on oath thereof made) may appoint another in his ſtead.* ſ. 3.

And *if in any place there ſhall be no ſuch nomination of overſeers as is before appointed, every juſtice of the diviſion ſhall forfeit* 5*l to the poor of ſuch place, to be levied by the churchwardens and overſeers, or one of them, by diſtreſs, by warrant from the ſeſſions.* 43 El. c. 2. ſ. 10.

The churchwardens] Theſe (as is above obſerved) were overſeers of the poor long before this ſtatute of the 43 *El.* And hereby they need no formal appointment to the office of overſeer, but the ſtatute declares them to be ſuch, and requires others to be added to them by the nomination of the juſtices.

Of every pariſh] In the caſe of the *King* againſt *Seven* and *Arnold*, *T.* 29 & 30 *G.* 2. two juſtices appointed *Seven* and *Arnold*, ſubſtantial houſholders in the *precinct* of the Tower within, *otherwiſe called the pariſh of St. Peter ad vincula*, to be overſeers of the poor of the ſaid *precinct*. It was objected, that this appointment is not warranted by the ſtatute, which requires that the churchwardens of every pariſh, and four, three, or two ſubſtantial houſeholders there, ſhall be appointed overſeers of the poor of the ſame *pariſh*. Mr. Juſtice *Deniſon* delivered the reſolution of the court (*Ryder* Ch. J. being dead, but concurring with the other juſtices before his death): This is not a good appointment under the 43 *El. c.* 2. which requires them to be appointed within a *pariſh*; neither is it good within the ſtatute of 13 & 14 *C.* 2. *c.* 12. which ſays, that there ſhall be yearly appointed two or more overſeers within

within every *townſhip* and *village* reſpectively. *Precinct* is a word of ambiguous ſignification; it is not a boundary of any pariſh or vill; it may be more than a pariſh, or may be leſs. If it was a pariſh or vill *by reputation*, it might have been good (*Cro. Car.* 92. 394); but the court cannot intend this precinct to be a vill, and the words of the ſtatute ought to be purſued. Neither will the words *otherwiſe called the pariſh of St. Peter ad vincula*, aid the want of this in the appointment: for in all conſtructions of *alias dict'*, the words that go before the *alias dict'* muſt be preſumed to be true; as in an indictment, the addition of the party not coming till after the *alias dict'* will vitiate the indictment, for what precedes the *alias dict'* is the true and proper appellation. If in this caſe the *alias dict'* had come after the pariſh of St. *Peter*, it would have done. And the appointment was quaſhed. *M. S.*

Pariſh] *E.* 8 *G. King* and the inhabitants of *Rufford*. A *mandamus* was directed to the juſtices of the peace of the county of *Nottingham*, reciting that within the vill of *Rufford*, in the foreſt of *Sherwood*, there are divers ſubſtantial freeholders, able to contribute to the maintenance of the poor, and that there are no churchwardens or overſeers to make a rate, and that there are poor unprovided for; therefore it commands them to appoint overſeers. They return that the vill of *Rufford* is part of no pariſh, but time out of mind has been extraparochial, without church, chapel, or parochial rites, and that there never have been any overſeers of the poor; and for that cauſe they cannot appoint. And there having been only an extrajudicial opinion of the court, in the caſe of *Dolting* and *Stokeland*, *H.* 11 *Ann.* that overſeers of the poor might be appointed in an extraparochial place; the court directed an argument, that the point might be ſolemnly determined. And after argument and conſideration of all the ſtatutes relating to the poor, the court were of opinion, that the powers given by the 43 *El.* to be executed in pariſhes, were by the 13 & 14 *C.* 2. extended to all townſhips and villages, whether parochial or extraparochial: that although moſt of the foreſts in *England* are extraparochial, yet notwithſtanding they ought to maintain their own poor; and conſequently overſeers might be appointed: for which purpoſe in this caſe a peremptory *mandamus* was awarded. *Str.* 512.

For the ſtatute directeth overſeers to be appointed within the ſeveral townſhips and villages within the ſeveral *counties* (without ſaying, within the ſeveral *pariſhes* in

in the ſaid counties); ſo that if it is a townſhip or village, and ſuch townſhip or village is within the *county*, it ſeemeth not to be material whether it is within any *pariſh* or not.

But a townſhip or village it muſt be. As in the caſe of *Denham* and *Dalham*, *E.* 8. *G.* 2. The queſtion was, whether *Southwold* park, being an extraparochial place, conſiſting of two houſes, and about 300 acres of land, was ſuch a place as was liable to maintain its own poor. By the court, It is now a ſettled point, that the juſtices may appoint overſeers in extraparochial places, but ſuch place muſt come under the notion of a town or village. It is difficult to define exactly what is a townſhip or village; this muſt be left to the judgment of the court, upon the circumſtances of the caſe ſtated. The notion of a village according to the ancient law, is a tithing conſiſting of ten families, and the conſtable properly is the head of the tithing. By the 43 *Eliz.* there muſt in every place be at leaſt two overſeers; and where there are only two houſes, the whole pariſh in ſuch caſe muſt be perpetual overſeers, and there is no perſon over whom they can have juriſdiction, nor any to chuſe them but themſelves. And it was adjudged, that two houſes are not within the rule, ſo as to come within the notion of a townſhip or village. And the like was ſaid to have been adjudged in the caſe of *Belvoir*, *M.* 2 *G.* 2. where there were two houſes, the duke of *Rutland*'s and an alehouſe. *Str.* 1004. *Burrow's Settlement Caſes.* 35.

So in the caſe of *Stoke Prior* and *Grafton*, *E.* 10. *G.* 2. The manor of *Grafton*, an extraparochial place, once conſiſting of a capital meſſuage and three keepers lodges in the park, now diſparked and conſiſting of five dwelling houſes and farms, occupied by five ſeveral tenants, but never having had any overſeers of the poor or other officer, till the overſeer now appointed for the purpoſe of the preſent removal, was adjudged by the juſtices to be a townſhip or village within the ſtatute, unto which a removal might be made. It was moved to quaſh the orders of the juſtices, and a rule was made to ſhew cauſe; and afterwards the rule was made abſolute, without defence. *Burrow's Settl. Caſ.* 101.

In the caſe of *K.* and the inhabitants of *Welbeck*, *M.* 14 *G.* 2. A *mandamus* was granted, ſuggeſting that there are ſeveral houſholders and farmers inhabiting and reſiding within the village of *Welbeck*, able to provide for the poor; and therefore commands the juſtices to appoint overſeers

of

of the poor. To this it is returned, that *Welbeck* is extraparochial, and is not, nor ever was reputed to be a village or townſhip, and therefore they cannot appoint any perſons to be overſeers. And upon argument this was held to be a good return. For though it doth not anſwer the ſuppoſal of the writ, as to there being ſeveral ſubſtantial houſholders and farmers; yet it anſwers the point in the 13 & 14 *C.* 2. *c.* 12. by ſaying it is no townſhip or village, or reputed as ſuch: and it is to ſuch places only that we can ſend a writ. *Str.* 1143.

T. 3 *G.* 3. *K.* v. *Showler* and *Atter*. Two juſtices appoint *Thomas Showler* and *John Atter* overſeers of the poor of the townſhip or village of *Haugh*. The ſeſſions, upon appeal, confirm the appointment, and ſtate ſpecially, that it appears to them, that the ſaid place called *Haugh* conſiſts of a capital meſſuage, in which *Thomas Showler* in the ſaid appointment named, with all his family, dwells; and of two ſmall ancient cottages; and of one other ſmall cottage lately built; (all which cottages are let, along with the ſaid capital meſſuage and the farm thereunto belonging, to the ſaid *Thomas Showler*;) and of another tenement part of the ſaid capital meſſuage; and all of them inhabited by families; and that one of the cottages is inhabited by the ſaid *John Atter*, who is a day labourer, and his family; and another of the ſaid cottages is inhabited by another day labourer, and his family; and the other of the ſaid cottages is inhabited by a ſhepherd and his family; and the tenement, part of the ſaid capital meſſuage, is inhabited by a poor widow and her five children: All which occupiers of the ſaid cottages, and of the ſaid tenement part of the ſaid capital meſſuage, are under-tenants to the ſaid *Thomas Showler*.——It was moved to quaſh theſe orders, for that the facts ſtated ſhew, that this place is neither a townſhip nor a village.——And the court were clearly and unanimouſly of opinion, that both theſe orders ought to be diſcharged. Lord *Mansfield* obſerved, that by this method a place might be made into a village, which in fact was not ſo; and the inhabitants of it might by this contrivance withdraw themſelves from contributing towards the ſupport of the poor of their pariſh. *Bur. Mansf.* 1391.

Four, three, or two] In the caſe of *K.* and *Harman, M.* 13 *G.* 2. An appointment of five overſeers was thought to exceed the direction of the ſtatute; but inaſmuch as the 13 & 14 *C.* 2. impowers the juſtices to appoint two or

or more (indefinitely) in townſhips or villages, and it hath been the cuſtom in large pariſhes to appoint more than four, the court would not quaſh the appointment. *Seſſ. C. V.* 2. 148.

But in the caſe of the *King* againſt *Loxdale* and others, *H.* 30. *G.* 2. on a rule to ſhew cauſe why an appointment of *five* overſeers for the pariſh of St. *Chad* in *Shrewſbury* ſhould not be quaſhed, it being objected that this appointment was not warranted by the ſtatute of the 43 *Eliz.*— By lord *Mansfield* chief juſtice: Upon reading the caſe of the *King* and *Harman*, I find it was preſſed in that caſe, that the uſage had been for more than four overſeers to be appointed; and Sir *John Strange* was inſtructed to argue it upon that head, on this maxim, that *communis error facit jus*. In the printed caſe of the *King* and *Harman*, it is ſaid, the court refuſed to quaſh the order. But this is a miſtake. Being deſirous to know the uſage in a variety of pariſhes, we deſired the agents to inquire what had been the uſage in the large pariſhes in *London* and *Weſtminſter*, and more particularly with reſpect to the different pariſhes in *Shrewſbury*. The reſult is, in *Shrewſbury* it appears there are four pariſhes, in which the number of overſeers has never exceeded four; but the pariſh of St. *Chad*, in which the preſent diſpute ariſes, has five for one year only: In the pariſh of St. *Andrew*'s, *Holborn*, there are eight overſeers; but then there are three diviſions there, and overſeers for each; and orders of removal are made from one diviſion to another: In St. *Giles*'s, eight overſeers; but in 1756, only four were appointed by the juſtices, and four more ſerve voluntarily as aſſiſtants: In other pariſhes no more than four. This account that has been given us is very ſatisfactory, for it lays the uſage out of the caſe, and proves it to have been the contrary way. This brings me to conſider what are the authorities and judicial precedents in this caſe. And this ſeems to be quite a new and original caſe, on which there has never been any judicial opinion given. There never was any doubt till the caſe of the *King* and *Harman*; and there the court gave no determination on the validity of the appointment, as appears by the rule "and the court "will further conſider of the order." The caſe of the *King* and *Beſland*, *H.* 18. *G.* 2. was very different from this; there it was impoſſible to have more than *one* overſeer. But there was no judicial opinion in that caſe, ſo that neither of theſe two caſes hath any determination extending to the preſent caſe. This caſe therefore being an original one, it muſt be determined on the true conſtruc-

tion of the ſtatute of the 43 *Eliz.* which may be called, The great conſtitution of the ſyſtem of law concerning the poor. To incline the court to conſtrue this act with a latitude, two other clauſes have been mentioned, that have been held merely directory: One is, with reſpect to the time of appointing; now the preciſe time is not of the eſſence of the thing, where third perſons, and innocent ones, are affected. As in the caſe of the town of *Launceſton*, 1 *Roll's Abr.* 513. An appointment after the time was held to be good, rather than defeat the intent of the charter, and leave the corporation deſtitute of a magiſtrate by another conſtruction. So in the caſe of the *King* againſt *Sparrow* and others (*Str.* 1123.) where the overſeers were appointed more than a month after *Eaſter*; and to have ſaid in that caſe, that there could not have been an appointment after the time, would be to ſay, that there is no remedy for the neglect of the juſtices to appoint within the time. The other clauſe is, to be nominated by the juſtices *in or near*. This is a looſe indefinite expreſſion. If a juſtice lives 20 miles off, if there is none nearer, he muſt be ſaid to be near. It is a word of relation. I do not ſee how this clauſe could be conſtrued otherwiſe. And though ſome part of the act ſhould be conſtrued to be directory, yet it cannot from thence be inferred that the whole is ſo. It is a rule of conſtruction, that where perſons as juſtices, commiſſioners, or the like, have a ſpecial authority by ſtatute, they have no power but under that ſtatute; and if the thing is done otherwiſe, and not agreeable to the ſpecial authority, it is void. There is no room for the diſtinction, that there muſt be negative words to circumſcribe the power. It was ſaid at the bar, that if a man has a power originally, and an act of parliament gives him ſomething leſs than he had before; there, without negative words, the act will not take away that which he had before. But it can never be neceſſary for the act to ſay a man ſhall not do what he could not do before. The meaning of the legiſlature was not to leave the juſtices an abſolute diſcretion, but to confine their diſcretion not to exceed four, nor to appoint leſs than two. There is another rule of conſtruction: Where there are at different times different ſtatutes made concerning the ſame matter, though ſome of them ſhould be expired, and not referred to by the ſubſequent ſtatutes; yet being *in pari materia* they ſhall all be taken together and conſidered as one ſyſtem of that branch of poſitive law, and giving light to one another. This has been ſo determined of the diſabling ſtatutes concerning

leaſes

leaſes by eccleſiaſtical perſons; ſo the ſtatutes relating to bankrupts, ſome of which are temporary, are *in pari materia*, and ſhall be taken together. Thus all the ſtatutes ſince the reformation concerning the poor, I conſider as a new body of poſitive law, and they muſt be taken together. By the 39 *Eliz. c.* 3. four overſeers were to be appointed, and there was no latitude at all. If the queſtion had ſtood upon that ſtatute, the juſtices could not appoint a greater number. There is a late inſtance: By the *Britiſh* muſeum act, 26 *G.* 2. *c.* 22. the truſtees, or the major part of them, were to do certain acts. It was found impoſſible to get the major part of them together, and they were forced to apply for a new act, 27 *G.* 2. *c.* 16. giving power to the major part of the truſtees then preſent, not leſs than ſeven, to do thoſe acts. It is plain to me, that in making the 43 *Eliz.* the legiſlature had the 39 *Eliz.* under their contemplation. They refer to it; and the 43 *Eliz.* was not to commence till the *Eaſter* following. The 39 *Eliz.* expired with the ſeſſion in *December*: They therefore continued the 39 *Eliz.* till the *Eaſter* following. This clearly accounts for the expreſſion four, three, or two; rather than two, three, or four; (for there is a great difference between theſe two expreſſions;) and points out to a demonſtration what the legiſlature meant. Pariſhes were not ſo populous then; and four were thought too many; and therefore the 43 *Eliz.* gives a latitude to appoint fewer, and directs the juſtices to be governed by the greatneſs or ſmallneſs of the pariſh. It has been contended, that the 13 & 14 *C.* 2. is a legiſlative expoſition of the 43 *Eliz.* I do not ſee that that ſtatute will vary the queſtion one way or the other. That ſtatute is to make each townſhip in the nature of a ſeparate pariſh; and ſays, that two or more overſeers ſhall be choſen in each townſhip. I liſtened for a caſe to ſhew that in theſe townſhips they could appoint five. Upon enquiry, it does not appear that more than two have been appointed. The ſtatute of *C.* 2. refers you, as to the appointment, to the ſtatute of the 43 *Eliz.* by expreſs words, and this reference is the ſame as repeating the ſtatute. It was obſerved that there has been a great latitude in the conſtruction of *C.* 2. that is, that it hath been extended to counties not therein named. But it would have been abſurd to ſay, that that ſtatute reciting an inconvenience in *Wales*, ſhould extend to ſome other place only. The ſtatute made in the year 1740, for the pariſh of St. *Martin*'s in the Fields has great weight with me. This proceeded

from a conviction in thoſe that applied for the act, that they could not appoint more than four. It ſhews that the parliament thought it was a real doubt, and that they thought it neceſſary that there ſhould be a boundary; for they have not left it at large, but confined the pariſh not to exceed nine overſeers. There are two acts which paſſed after the caſe of the *King* and *Harman* and the act for St. *Martin*'s pariſh, in the 17 *G.* 2. to remedy ſome inconveniencies relating to the Overſeers, with regard to rates and other matters; and yet they make no alteration in the number of overſeers. In the pariſh of St. *Clement's Danes*, they have reſtrained themſelves to four ever ſince. And the preciſe number is not immaterial, as was ſaid at the bar, either to the parties themſelves, for it is a burthenſome office, and the more there are at the ſame time, the quicker will the rotation be; or to the pariſhes for whom they are truſtees, for a truſt is not the better diſcharged by a greater number than by a few. There may be more expence in a larger number. They may be obliged to divide themſelves into ſeparate quorums; which is no immaterial conſideration to the perſons with whom they are to act. If five may be allowed, there will be no boundary, and then there will be great inconveniencies. Upon the whole, the words are preciſe; and the uſage, which alone occaſioned my doubt, turns out the other way. This appointment is not warranted by the 43 *Eliz.* ——Mr. juſtice *Deniſon* was of the ſame opinion. He ſaid if this had been a matter of doubt, it is ſtrange that it ſhould never have come before the court before the caſe of the *King* and *Harman*, in the 13 *G.* 2. In that caſe they did not quaſh the appointment, for the ſake of the poor of that particular pariſh. This is an original creation of the juriſdiction for the maintenance of the poor. The number of overſeers is the eſſential part of the conſtitution. Where a juriſdiction is created by ſtatute, you cannot vary from it. This office is partly miniſterial and partly judicial. The ſtatute of 13 & 14 *C.* 2. is tied up according to the rules of the 43 *Eliz.* and one of the rules is the reſtraint. As it has reſted ſo long, I am of opinion an appointment of five overſeers cannot be warranted.—By Mr. juſtice *Foſter:* I never had a doubt. The court has gone hitherto upon the prudential reaſon of not overturning the rates of ſo many pariſhes. In queen *Elizabeth*'s time there were no large and populous pariſhes in great towns and cities. There were indeed pariſhes of large extent in the country; but they are provided for by the 13 & 14 *C.* 2. If any inconveniencies ariſe from

having too few officers in particular pariſhes, you muſt apply to parliament. It would produce confuſion to have more officers. The 43 *Eliz.* is the firſt ſtatute now in force, but not the firſt which provided for the poor. It does little more than make the 39 *Eliz.* perpetual. And there were ſeveral ſtatutes before that.—By Mr. juſtice *Wilmot:* The circumſtance that made me doubt was, the notion of an uſage to have more than four overſeers in large pariſhes. The words of the act are ſo ſtrong, that had the uſage been otherwiſe, I ſhould have doubted whether that could have controuled them; but the uſage being to appoint but four, it furniſhes a ſtrong argument. And the act for St. *Martin*'s is a ſtrong inſtance of the ſenſe of the legiſlature. The parliament finding two parochial officers, to wit, the churchwardens, added others for the parochial adminiſtration. The 43 *Eliz.* relaxes the 39 *Eliz.* and gives a diſcretion within the number four. In the 18th clauſe, with reſpect to the iſland of *Fowlneſs* in *Eſſex*, a power is given to the juſtices, to appoint ſuch a number of overſeers as the exigencies of the place ſhall require; which ſhews, that where the legiſlature meant an indefinite number, they have expreſſed it. In general, it would be inconvenient to have an indefinite number; it would not leſſen the burden; nor would the pariſh have a greater ſecurity, for each man is anſwerable only for the money he receives, and accountable for his own acts only. *M. S.*

Subſtantial houſholders there] *M.* 20 *G.* 2. Caſe of the overſeers of *Weobly* in *Herefordſhire*. There were two ſets of overſeers appointed, and both quaſhed; one, becauſe the perſons appointed were deſcribed only as *principal inhabitants*, inſtead of purſuing the words of the ſtatute, which are, *ſubſtantial houſholders:* And the other, becauſe it only called them ſubſtantial houſholders, without adding *there*, or *in the pariſh*; and this too was not in the body of the appointment (as it ought to be) but only in the direction at the foot of it. *Str.* 1261.

And abundance of other orders have by the court of king's bench been quaſhed from time to time, for not ſetting forth that the perſons appointed were ſubſtantial houſholders.

And it ſeems not to be ſufficient that the party appointed is an inhabitant for part of the year only, but he ought to be generally reſident there; and therefore the court of king's bench ſeemed to diſcountenance a pariſh in chuſing a citizen of *London*, who only reſided with them in the

ſummer, to be overſeer; but the order being bad in other reſpects, no judgment was given upon this point. *Carth.* 161. *K.* and *Moor.*

It ſeemeth that a *woman* (though a ſubſtantial houſholder) ought not to be appointed overſeer; but the point was not directly determined. The caſe was this: A *mandamus* was moved for to the juſtices to nominate two ſubſtantial houſholders to be overſeers of the poor of the pariſh of *Chardſtock* in the county of *Dorſet*; and there was an affidavit, that at a meeting of the pariſh after *Eaſter* laſt, a man and a woman were elected overſeers, and at a meeting of the juſtices they approved of the man, and refuſed the woman, as being an unfit perſon to ſerve as overſeer; and the old overſeers refuſing to nominate any other, the juſtices approved of the man only. By *Powel* J. A woman is not to be an overſeer of the poor, and there can be no cuſtom in a pariſh to put her in, becauſe of her being an houſholder. And *Parker* Ch. J. directed, that the pariſh ſhould apply to the juſtices to have another nominated, and if they refuſed, then to apply to the court for a *mandamus* the next term. *E.* 10 *An.* 16 *Viner.* 415.

Whether a *juſtice of the peace*, may be appointed overſeer, ſeemeth not to have been determined. By the tenor of the following report, it ſeemeth to be in a great meaſure diſcretionary in the juſtices appointing, and in the ſeſſions upon an appeal, to determine whether he is a fit perſon or not. *H.* 30 *G.* 2. *Rex* v. *James Gayer*, eſquire. Two juſtices appointed Mr. *Gayer* to be overſeer of the poor of the pariſh of *Rockbear* in the county of *Devon.* The ſeſſions, upon appeal, vacate the appointment; ſetting forth, that it appearing to them that he was then an acting juſtice of the peace for the ſaid county, and alſo a lieutenant of marines in his majeſty's ſervice on half pay, and that there are other ſufficient ſubſtantial houſholders within the ſaid pariſh for the doing ſuch office, they therefore vacate and make void the appointment of the ſaid *James Gayer.* On a rule to ſhew cauſe, the counſel on both ſides went into a long argument, whether the reaſons given were ſufficient; particularly whether the offices of juſtice of the peace, and of overſeer of the poor were compatible, and whether the objection could be removed by appointing a deputy overſeer, if it could, then, whether a juſtice of the peace was liable to be appointed overſeer, in order to his executing the office by deputy.—By lord *Mansfield* Ch. J. The general queſtions concerning the incompatibility of offices, and the power of appointing deputies, are of a very large compaſs indeed; but the preſent

ſent queſtion ſeems to me to turn in a very narrow ſpace. The ſeſſions, upon an appeal, have a right to exerciſe the ſame latitude of diſcretion, in judging who are fit to be nominated overſeers, as the two juſtices had. They have given their opinion that Mr. *Gayer* was not a proper perſon to be appointed overſeer. They are not obliged to give any reaſon for their opinion; becauſe the legiſlature has intruſted them, upon an appeal, with the power or authority of appointing overſeers. If they had given no reaſon, their order had undoubtedly been good. We muſt have preſumed that they acted upon proper grounds. It is true, that where the whole reaſon is ſet out, and is clearly wrong; we may, and ought to quaſh an order manifeſtly made by miſtake, upon an erroneous foundation. But then the bad reaſon given, muſt appear to have been their only inducement. If there may have been other grounds, they ſhall be preſumed ſufficient; and the order ought not to be ſet aſide, becauſe ſome of their reaſons, unneceſſarily given, appear to be bad. There was no neceſſity for appointing Mr. *Gayer*. The ſeſſions ſtate, that there were other ſufficient ſubſtantial houſholders within the pariſh. They might think Mr. *Gayer*, under all the circumſtances, improper unneceſſarily to be appointed. His being an acting juſtice of the peace, and a lieutenant of marines, might be two circumſtances which weighed among others. But it doth not follow, neither is it ſaid, that they looked upon both or either of theſe reaſons, as an exemption from being appointed, or a diſability to ſerve the office of overſeer; and that they vacated the warrant of two juſtices as illegal upon that account. The execution of a diſcretionary power, where it is not neceſſary to give a reaſon, ought to be ſupported, unleſs the whole reaſon is ſet out, and manifeſtly wrong. Here, the whole reaſon, upon which the ſeſſions acted, is not given. They ſay there were other perſons qualified. Suppoſing Mr. *Gayer* liable to ſerve the office, they might think him not ſo proper as many others. And therefore we are not obliged to ſay, that the whole reaſon they went upon is bad; allowing (for argument) that there aroſe no legal objection to the appointment of Mr. *Gayer:* Which, I think, there is no occaſion now to examine.—Mr. juſtice *Deniſon* concurred, and ſaid, They were not obliged to give any reaſon at all; and if it be only an imperfect one, we ought not to quaſh their orders. We will intend every thing in favour of the juſtices, in their orders. Now here, the reaſon doth not appear to be a wrong reaſon; It is enough, that they judged him an

improper perſon to be overſeer.——And by the court unanimouſly, the order of ſeſſions was confirmed, diſcharging Mr. *Gayer* from being overſeer. *Burr. Manſf.* 245.

By the 2 *G.* 3. *c.* 20. No perſon ſerving for himſelf as a private man in the *militia*, ſhall during the time of ſuch ſervice be liable to ſerve as overſeer of the poor. [But the act provides no exemption for the officers.]

By the 18 *G.* 2. *c.* 15. Freemen of the corporation of *ſurgeons* in *London*, are exempted from the office of overſeer of the poor.

To be nominated yearly in Eaſter *week*] *E.* 13 *G. K.* and *Clerkenwell.* The court ſeemed to think an appointment of overſeers on a *Sunday*, to be a good appointment; for it may be in *Eaſter* week, and this is the firſt day of the week.—But the caſe was determined upon another point, becauſe they were not ſaid to be *ſubſtantial houſholders.* Foley 4.

In the caſe of *K.* and *Butler*, *E.* 8 *G.* 3. Lord *Mansfield* aſked, whether there had been any determination that an appointment on a *Sunday* was good? Mr. juſtice *Aſton* ſaid, he had a note from Mr. juſtice *Bathurſt*, of the ſaid caſe of *K.* and *Clerkenwell*, that an appointment made on *Eaſter Sunday* ſhall be good, it being a work of charity. But lord *Mansfield* ſaid, notwithſtanding that reaſon, I ſhould think, that an appointment on a *Sunday* is *prima facie* clandeſtine and void. *Black. Rep.* 649.

T. 14 *G.* 3. *K.* and the overſeers of *Bridgewater.* Upon ſhewing cauſe why ſeveral appointments of overſeers ſhould not be quaſhed, the caſe appeared to be a conteſt between two adverſe ſets of borough juſtices. Each ſet met before midnight of *Eaſter-even*, and each began making their appointment of overſeers the inſtant the clock had ſtruck twelve; and ſo kept on renewing the ſame appointments for an hour or two. But one ſet of them made a freſh appointment at eight o'clock on the *Sunday* morning, ſuppoſing that there might be a conteſt concerning the priority of thoſe appointments which were made ſoon after midnight, and perhaps all of them bad. On ſhewing cauſe, ſeveral caſes were cited to prove the appointments good. But by lord *Mansfield:* The conduct of the juſtices in this caſe is a ſhameful proſtitution and abuſe of their office for election purpoſes; and I wiſh any perſon could be found who would undertake to proſecute both parties. It would have been more for the intereſt of either ſide, to have waited for a legal appointment on the *Monday.* I do not know that

that there is any authority which ſays, that an appointment made on a *Sunday* is good; but it certainly is not a day for ſuch purpoſes as theſe, and therefore I will not give my ſanction to any of the appointments. Let all the appointments be ſet aſide, and a *mandamus* be directed to the juſtices to make a new appointment; and let the mayor give two days notice of the time and place of meeting for ſuch appointmen.. The other two judges concurred. *Cowper.* 139.

Or within one month after Eaſter] *H.* 13 *G.* 2. *K.* and *Sparrow.* Upon a rule to ſhew cauſe, why the appointment of overſeers for the town of *Ipſwich* ſhould not be quaſhed, the objection was, that the juſtices, upon a *mandamus* directed to them, had appointed overſeers, but that it was not within the month after *Eaſter*, but afterwards, and that conſequently the appointment was void. But by *Lee* Ch. J. who delivered the opinion of the court; as the juſtices are puniſhable by the act for not doing their duty, it would be a very hard conſtruction to make the appointment itſelf void, for it would ſubject the pariſh to very great inconveniences, for a thing which is not in their power to prevent. To interpret an act of parliament, we muſt conſider the miſchief to be remedied, the remedy provided, and the true reaſon of that remedy. In this caſe, the defect is, the want of a proper officer to take care of the poor. The remedy is, that the juſtices ſhall appoint overſeers, and that within ſuch a time. Now the juſtices have neglected their duty, in not appointing overſeers within the proper time, and by the act have forfeited 5 l, but that doth not make ſuch appointment void. Were the expreſs direction of the act, that they ſhould appoint in that and no other time, it would be otherwiſe; but here the ſtatute is only directory, and a penalty inflicted on the juſtices for not following ſuch directions. 2 *Seſſ. C.* 140. *Str.* 1123.

Under the hand and ſeal of two or more juſtices] *M.* 13 *G. Chilmerton* and *Flagg.* The *ſeſſions* appointed overſeers: but the order was quaſhed by the court of king's bench, becauſe the ſeſſions have no original juriſdiction in that caſe by the ſtatute. 1 *Seſſ. C.* 260. *Foley.* 7.

And the reaſon is, becauſe the ſtatute gives a power of appealing to the ſeſſions againſt the order of appointment; which power by this means would be taken away.

In

In or near the pariſh or diviſion] *M.* 13 *G.* 2. *K.* and *Sparrow.* An appointment of overſeers, not mentioning the juſtices to be of the diviſion, was held to be good enough; for that the words in this caſe are only directory. 2 *Seſſ. C.* 140.

In ſome of the ancient ſtatutes, not now in force, as particularly the 22 *H.* 8. *c.* 12. the juſtices were required to *divide* themſelves, for the better execution of the regulations concerning the poor. And thence came the clauſe in the ſubſequent ſtatutes, that the juſtices *of the diviſion* were to do ſuch and ſuch things. But as there is no law at preſent which requires them to *divide* for the aforeſaid purpoſes, there is properly no *diviſion* in the ſenſe which the ſtatutes intended; and conſequently it cannot be neceſſary to ſet forth now, that the juſtices are *in or near the diviſion.*

And many other counties in England *and* Wales] *T.* 27 *C.* 2. in the caſe of *Skillington* and *Norton*, it was held, that although other counties in general are here mentioned in the recital; yet the ſtatute doth not extend to any other counties but thoſe expreſsly named, none others being ſpecified in the enacting part. 2 *Lev.* 142.

But afterwards, in the caſe of *Dolting* and *Stokeland*, *H.* 11 *An.* It was held by the whole court, that by reaſon of the words [*and many other counties in* England *and* Wales] the act is general, and extends to other counties than thoſe named in the act, otherwiſe it would not extend to one county in *Wales.* Foley 98.

And in the caſe of *Clifton* and *Churcham*, *H.* 12 *G.* 2. It was adjudged, that the act extendeth to all counties, being equally beneficial to all; and that the counties there ſpecified are mentioned only as inſtances. And *Lee* Ch. J. ſaid that ſo it was determined, upon great debate and conſideration, in the aforeſaid caſe of *Dolting* and *Stokeland*; which caſe hath been ever ſince adhered to. *Andrews.* 314.

By reaſon of the largeneſs of the pariſhes cannot reap the benefit of the act of 43 Eliz.] *T.* 27 *&* 28 *G.* 2. *K.* and the juſtices of *Middleſex.* On a rule to ſhew cauſe why a *mandamus* ſhould not go to compel the juſtices to appoint overſeers for the townſhip of *Kentiſh Town*, it appeared by the affidavit that this pariſh hath always had two overſeers: That a rate has been made as one rate for the whole pariſh: That their appointments have been for the whole pariſh, but that each overſeer had collected and paid within his own diviſion; and if at the end of the year there is a ſurplus

ſurplus in either of their hands, it is ſo much of it paid over into the hands of the other overſeer as to make them both equal: That they have one workhouſe; one overſeer looks over it one week, the other the next.——It was objected to this rule, that this ſeparate appointment would diſmember the pariſh, which has been united to this time: That when the 43 *Eliz.* was made, and before the 13 & 14 *C.* 2. every pariſh maintained its own poor: That the 13 & 14 *C.* 2. was made to accommodate large pariſhes, where ſome parts lay at a great diſtance from others; and it was neceſſary for their convenience to have an increaſe of officers: If that ſtatute were to extend to all towns, pariſhes, and vills, the populous parts of the pariſhes would be moſt burdened, and the out-parts of them and the greateſt extent of lands would be in a great meaſure excuſed: To intitle the petitioners to what is now prayed, it ſhould be ſhewn that they are ſuch a pariſh as cannot receive the benefit of 43 *Eliz.* without the aid of 13 & 14 *C.* 2.: It is not ſworn that two overſeers are not ſufficient: It doth not appear, that this vill of *Kentiſh Town* is a diſtinct vill or townſhip; ſo it is not brought within the 13 & 14 *C.* 2.——It was anſwered, That this writ of *mandamus* determines nothing of itſelf, but is a means of trying this fact, and that the juſtices may try the ſpecial matters: That this is ſo populous a pariſh that it requires more attendance than any in the northern parts which are ſpecified in the act.——By the court: If this is a caſe that falls within the 13 & 14 *C.* 2. a *mandamus* is a writ of right, and the court muſt grant it. It has been determined, that this ſtatute is not to be confined to the counties mentioned in the ſtatute. *Kentiſh Town* has never been conſidered as a ſeparate diviſion; and the overſeers have been uſually appointed for the whole pariſh. What is declared from the affidavit ſhews, that they can do very well under the 43 *Eliz.* without calling in aid the 13 & 14 *C.* 2. for they have two overſeers, and the methods they have uſed to collect their rates, and to take care of their poor, is very juſt and reaſonable. To bring this within the ſtatute, they muſt ſhew this to be a diſtinct vill or townſhip. We expected they would have ſhewn that they had ſeparate overſeers, maintained their poor ſeparately, and had a ſeparate rate.—And the rule for a *mandamus* was diſcharged. *Bolt.* 17.

H. 5 *G.* 3. *Peart* & *Weſtgarth.* On a ſpecial verdict at the *Durham* aſſizes, it was ſtated for the opinion of the court, That the pariſh of *Stanhope*, from the 43 *Eliz.* to the 9 *G.* 1. had one joint appointment of overſeers of the poor

poor of the ſaid pariſh; and during all that time, the poor of the ſaid pariſh were jointly relieved and maintained by intire and general rates upon the whole pariſh: That during the time above-mentioned, there were four church-wardens, and four overſeers of the poor; which four overſeers were reſpectively nominated out of each of the four quarters or diſtricts within the ſaid pariſh: That the ſaid pariſh is 20 miles in length from eaſt to weſt, and 8 miles at a medium in breadth: That in the 9 *G.* 1. at the general quarter ſeſſions for the county of *Durham* it was ordered, that the ſeveral townſhips within the ſaid pariſh ſhould maintain their poor ſeparately; and from that time there have been ſeparate appointments of overſeers for each of the ſaid four quarters or diviſions. The caſe further ſtated, that orders of removal had from time to time been made ſince the 9 *G.* 1. for the removal of poor perſons from one of the ſaid quarters or diſtricts to another, and appeals made by one quarter againſt another, concerning orders of juſtices relating to the poor of each. The queſtion was, Whether the ſeveral places or diſtricts were one intire pariſh, townſhip, or village; or whether the ſaid ſeveral places, being ſo divided as aforeſaid, conſtituted four diſtinct and ſeparate townſhips or villages within the 13 & 14 *G.* 2. *c.* 12.——Againſt the diviſion it was argued, that in order to intitle themſelves to a diviſion it muſt be ſhewn, that the pariſh was ſo large, that they could not otherwiſe have the benefit of the 43 *Eliz. c.* 2. To prove this, was cited the caſe of the *King* againſt the juſtices of *Middleſex*, relating to the inhabitants of *St. Pancras* and *Kentiſh Town*, *Tr.* 1754. That in this caſe there are no facts to warrant this diviſion. The ſeſſions had no power to make it. Neither the ſeſſions nor this court have power to make a diviſion, but upon facts which ſhew the pariſh to be ſo large that it cannot have the benefit of the 43 *Eliz.* It ſhall be preſumed, that the act may be put in force, unleſs the contrary appears. That the truth of the matter in this caſe was, that the rich part of the pariſh wanted to ſeparate themſelves from the poor part, and throw the burden upon them.——On the other hand, it was argued, that although it is ſtated, that this pariſh was one intire pariſh from the 43 *Eliz.* till the 9 *G.* 1. yet it is alſo ſtated, that there were four churchwardens and four overſeers, one out of each quarter. As to the caſe of the *King* againſt the Juſtices of *Middleſex*, relating to the inhabitants of *St. Pancras*, the *mandamus* was denied to appoint overſeers for the north diviſion of *Kentiſh Town*, becauſe it appeared, that the pariſh *could* reap the benefit of

the

the 43 *Eliz.* and it did not appear that the north diviſion of *Kentiſh Town* was a townſhip or vill. In the preſent caſe, the order of ſeſſions has been acquieſced under for above 40 years, during all which time ſeparate overſeers have been appointed.——By lord *Mansfield* and the court: The policy of this law of the 13 & 14 *C.* 2. was miſtaken. It went upon a wrong principle. The diviſions ought rather to be inlarged than diminiſhed. As to the queſtion itſelf: It ought to appear, that there was an inability in the pariſh to have the benefit of the act of the 43 *Eliz.* Now here, no ſuch inability appears; but quite the contrary, for a great number of years. So that there is no foundation for the diviſion. The acquieſcence under it was upon a falſe notion, that the ſeſſions had ſuch a power: Which they had not. And there is no inconvenience in ſetting right this wrong uſage which has obtained for 40 years. Here the foundation is wanting. Therefore they ought to appoint overſeers for the whole pariſh. *Burr. Mansf.* 1610.

E. 20 *G.* 3. *K.* and the inhabitants of *Uttoxeter*. On a rule to ſhew cauſe, why an order of ſeſſions, confirming ſeparate appointments of overſeers of the poor for the townſhip of *Uttoxeter* and three other diviſions of the pariſh of *Uttoxeter* in *Staffordſhire*, ſhould not be quaſhed, it appeared from the ſpecial caſe ſtated by the ſeſſions, that the pariſh of *Uttoxeter* is five miles in length and five in breadth, and contains five ſeveral townſhips: That the ſaid townſhips are one intire pariſh: That ever ſince the year 1643, they have had ſeparate appointments of overſeers in the ſeveral townſhips within the ſaid pariſh; but that until the year 1730 they jointly relieved and maintained the poor in and throughout the pariſh; but ſince that time they have generally maintained them ſeparately in the ſeveral diviſions.——In ſupport of the order of ſeſſions, it was argued, that it appears from the facts found by the ſpecial caſe, that the pariſh hath not had the benefit of the ſtatute of 43 *Eliz.* ſince more than four overſeers had been appointed ever ſince the year 1643, and that ſtatute doth not authorize the appointing more than four. Mr. juſtice *Buller* ſaid, Ought it not to have been ſtated in the caſe, as a ſubſtantive fact, that the pariſh had not had the benefit of the 43d of *Elizabeth?* Unto which it was anſwered, that if enough is clearly and explicitly ſtated, to ſhew it to be the truth, the court will infer it without an expreſs finding, for the purpoſe of ſupporting the order. The rule with regard to orders of ſeſſions is the reverſe of what obtains

tains in the caſe of convictions. The court preſumes againſt convictions, unleſs facts appear ſufficient to ſupport them; but an order of ſeſſions is preſumed to be right, unleſs the facts ſtated prove it to be wrong.——On the other hand, in ſupport of the rule for quaſhing the orders, it was inſiſted, that the caſe of *Peart* and *Weſtgarth* is directly in point, and that it is clearly eſtabliſhed by that caſe, that unleſs the ſeſſions expreſsly ſtate that the pariſh hath not had the benefit of 43 *Eliz.* the court will preſume that it has: That the ſtatute of *C.* 2. mentions largeneſs as the only reaſon for a diviſion, and the caſe of *Peart* and *Weſtgarth* ſhews, that the pariſh of *Uttoxeter* is not too large; for there, the pariſh of *Stanhope* appeared to be twenty miles long, and yet it was not to be divided, and *Uttoxeter* pariſh is only five miles.——Lord *Mansfield* ſtopped the other counſel on the ſame ſide, and ſaid, The caſe of *Peart* and *Weſtgarth* decides the queſtion. It muſt appear to the court that there was a diſability to reap the benefit of the ſtatute of 43 *Eliz.* Here the contrary appears. Tho' there were ſeparate overſeers, there was a joint maintenance till 1730. The acquieſcence of the pariſh for a number of years will not alter the law. The caſe of *Peart* and *Weſtgarth* was well conſidered. The court thought the ſtatute of *C.* 2. proceeded upon a bad principle of policy, for that large diſtricts for the purpoſe of maintaining the poor are much to be preferred to ſmall ones.——And the order of ſeſſions, and the four appointments of overſeers, were quaſhed. *Douglas.* 332.

Within the ſeveral and reſpective townſhip and village] *T.* 10 *G.* 3. *Kirkby Stephen* and *Wharton.* The pariſh of *Kirkby Stephen* is a large pariſh, conſiſting of ten different townſhips, who maintain their reſpective poor, and have ſeparate overſeers. The townſhip of *Kirkby Stephen* and the townſhip of *Wharton* are two of theſe ten townſhips. The pauper *William Greer* was removed from *Newport* by an original order directed to the officers of the *pariſh* of *Kirkby Stephen*, and adjudging his ſettlement to be in that *pariſh*, and removing him to that *pariſh*; and was brought, together with this order, by the overſeers of *Newport*, and delivered to the overſeer of the *townſhip* of *Kirkby Stephen.* But neither the *pariſh* of *Kirkby Stephen*, nor the *townſhip* of *Kirkby Stephen*, appealed from the order; and the pauper remained in *Kirkby Stephen*, and was maintained by a ſiſter in the townſhip of *Kirkby Stephen*, for near a year and an half; when, his ſiſter dying, he aſked relief of the townſhip

ſhip of *Kirkby Stephen*; who thereupon got him removed by an order of two juſtices to the townſhip of *Wharton*. Which order was quaſhed upon appeal, ſubject to the opinion of the court of King's Bench, upon the above recited ſtate of the caſe. It was moved to quaſh the order of ſeſſions, and urged that the townſhip of *Kirkby Stephen* was not precluded from diſputing the ſettlement with another townſhip in the ſame pariſh. The firſt order of the two juſtices removes from *Newport* to the *pariſh* of *Kirkby Stephen:* And the *pariſh*, 'tis true, have not appealed againſt it. But the pariſh at large conſiſts of ſeveral townſhips: Which ſeveral townſhips are not affected, as between one and another of theſe particular townſhips, by the non-appealing of the pariſh at large. That if they had appealed, the determination muſt have been againſt them: For the order removed the pauper to the *pariſh* of *Kirkby Stephen*; and it is agreed on all hands, that his ſettlement was within the pariſh.——On the other hand, it was inſiſted, that the townſhip of *Kirkby Stephen* was bound and concluded by the order of removal from *Newport* to *Kirkby Stephen*, unappealed from. The original order calls *Kirkby Stephen* a pariſh, tho' it is only a townſhip: But that miſtake will not vary the law. They ought to have appealed: And upon an appeal, they might have availed themſelves of that miſtake; or of the merits, if they had any. But not having appealed, they are concluded againſt all the world. ——By lord *Mansfield* and the court: The original order, made for the removal from *Newport* to the *pariſh* of *Kirkby Stephen*, muſt mean the *townſhip* of *Kirkby Stephen*. The townſhip was as a pariſh for this purpoſe, of a removal to it; the poor within the pariſh not being maintained by the whole pariſh, but by the particular townſhips to which they reſpectively belong. The townſhip of *Kirkby Stephen* ought, in this caſe, to have appealed. They could not get rid of this order, but by appealing. And if they had appealed, the truth might have appeared. And when the facts had appeared to the juſtices, upon the whole truth being diſcloſed, the pauper might, in the end of the inquiry, have been ſent to *Wharton*.—And the order of ſeſſions was affirmed. *Burrow's Settl. Caſ.* 664.

If in any place there ſhall be no ſuch nomination as is before appointed] That is, in *Eaſter* week, or within one month after *Eaſter*. For the clauſe doth not ſuppoſe, that no overſeers at all are appointed within ſuch place, but only not within ſuch time; for the penalty is required to be levied by the *churchwardens and overſeers*, or one of them.

Every

Every juſtice of the diviſion ſhall forfeit 5 l.] This proceeds upon the ſuppoſition of the juſtices being obliged to divide; for in that caſe the appointment was to be by the juſtices in or near the diviſion, and not otherwiſe: But now the juſtices at large are all equally concerned; and therefore it ſeemeth, that this penalty cannot now be levied on any particular juſtice. But if in any place no overſeer ſhall be appointed, a *mandamus* will go to the juſtices at large, to compel them to appoint.

Warrant for returning liſts of overſeers.

2. And that the juſtices may know what perſons are fit to be appointed overſeers, it is uſual and requiſite for them to iſſue their precepts in ſome ſuch form as here followeth; *viz.*

Weſtmoreland. } To *Henry Wilkinſon*, gentleman, high conſtable of *Kendal Ward*, within the ſaid county.

WE *two of his majeſty's juſtices of the peace for the ſaid county, one whereof is of the* quorum, *do hereby require you forthwith upon your receipt hereof, to iſſue your warrants to all the petty conſtables within your ſaid ward, in the form or to the effect, according as upon this our warrant is indorſed: Given under our hands and ſeals the——day of——*

The form of the ſaid high conſtable's warrant to the petty conſtable.

Weſtmoreland, Kendal ward. } To the conſtable of ——

BY *virtue of a precept from two of his majeſty's juſtices of the peace in and for the ſaid county (one whereof is of the* quorum) *to me directed, you are hereby required immediately upon ſight hereof, to give notice to all and every the overſeers of the poor within your conſtablewick, that they make out a liſt in writing of a competent number of ſubſtantial houſholders within their reſpective diſtricts, and deliver in the ſame to the ſaid juſtices and others his ſaid majeſty's juſtices of the peace for the ſaid county, at —— in —— in the ſaid county, on —— the —— day of —— at the hour of ——in the forenoon of the ſame day; to the end that out of the ſaid liſt the ſaid juſtices may appoint other overſeers of the poor for the year then next enſuing. And be you then there, to certify what you ſhall have done in the premiſſes. Herein fail you not. Given under my hand the —— day of —— in the year of our Lord ——.*

Henry Wilkinſon, *high conſtable.*

3. And the form of an appointment of overſeers, clear of the objections abovementioned, may be thus: Form of an appointment of overſeers.

Weſtmorland. WE *two of his majeſty's juſtices of the peace in and for the ſaid county, one whereof is of the* quorum, *do hereby nominate and appoint* A. O. *and* B. O. *being ſubſtantial houſholders of the pariſh* [or, *townſhip*] *of* —— *in the ſaid county, to be overſeers of the poor of the ſaid pariſh* [or, *townſhip*] *according to the direction of the ſtatute in that caſe made and provided. Given under our hands and ſeals* (within a month after *Eaſter.*)

But by a remedial clauſe, in the act of the 17 *G.* 2. *c.* 38. it is enacted, that *the diſtreſs for the poor rate ſhall not be deemed unlawful, for any defect or want of form, in the warrant for the appointment of overſeers.* ſ. 8.

4. *If any perſon ſhall find himſelf aggrieved, by any act done by the ſaid juſtices; he may appeal to the general quarter-ſeſſions, whoſe order therein ſhall bind all parties.* 43 El. c. 2. ſ. 6. Appeal againſt the order of appointment.

To the general quarter ſeſſions] This clauſe leaves the appeal at large, and doth not reſtrain it to the *next* ſeſſions: But the above-mentioned act of the 17 *G.* 2. directs the appeal to be to the *next* ſeſſions, but yet not in negative words, ſo as to ſay, that it ſhall be at the next ſeſſions, and not otherwiſe. So that both may ſeem to ſtand well together; and then the ſenſe of the ſtatute of the 17 *G.* 2. will be this, That the appeal againſt any thing done or omitted by the overſeers or juſtices, in caſes wherein no appeal is given by former ſtatutes, muſt be to the next ſeſſions only, becauſe the clauſe which gives the appeal, limits it to ſuch next ſeſſions; but in caſes wherein an appeal is given by former ſtatutes, ſuch appeal may be to the next ſeſſions according to this clauſe, or may be according to the directions of ſuch former ſtatutes. And in truth many acts of the churchwardens and overſeers may be ſo contrived, that they cannot be known before the next ſeſſions, and it would give them a great opportunity of fraud, if they might be ſafe by concealing ſuch practices until the time of appealing to the next ſeſſions ſhould be expired. But then, in the caſe before us, there is no power to award coſts, unleſs the appeal be to the next ſeſſions by the 17 *G.* 2.

5. *M.* 14 *G.* 2. *K.* and *Jones.* A perſon was indicted, for not taking upon him the office of overſeer; and by the court it was held to be an offence indictable; for that although the ſtatute appoints a penalty, yet that penalty is Overſeer refuſing to take the office.

not for refuſing to take the office, but for neglect of duty in that office; and where a ſtatute commands a thing, and appoints no penalty for diſobedience, ſuch offence is indictable as a contempt of the law. 2 *Seſſ. C.* 187. *Str.* 1146.

Overſeers general duty.

6. The overſeers thus appointed, and taking upon them the office, ſhall *within* 14 *days receive the books of aſſeſſments and of accounts, from their predeceſſors, and what money and materials ſhall be in their hands, and reimburſe them their arrears.* 17 G. 2. c. 38. ſ. 1, 11, 13.

And they ſhall take order from time to time, with the conſent of two ſuch juſtices as aforeſaid, for ſetting to work the children of all ſuch whoſe parents ſhall not by the ſaid churchwardens and overſeers, or the greater part of them, be thought able to keep and maintain them; and alſo for ſetting to work all ſuch perſons, married, or unmarried, having no means to maintain them, and uſing no ordinary and daily trade. Which ſaid churchwardens and overſeers, or ſuch of them as ſhall not be let by ſickneſs or other juſt excuſe, to be allowed by two ſuch juſtices, ſhall meet at leaſt once a month, in the church, on Sunday *in the afternoon, after divine ſervice, there to conſider of ſome good courſe to be taken, and order to be ſet down in the premiſſes: Upon pain that every one of them abſenting themſelves without lawful cauſe, from ſuch monthly meeting, or being negligent in their office, ſhall forfeit for every default* 20 *s to the poor; to be levied by ſome or one of the churchwardens and overſeers, by warrant from two ſuch juſtices, by diſtreſs; or in defect thereof, any two ſuch juſtices may commit the offender to the common gaol, there to remain without bail or mainprize, till the ſaid forfeiture ſhall be paid. Provided that if any perſon ſhall be aggrieved by any act done by the ſaid churchwardens and other perſons, he may appeal to the general quarter ſeſſions, whoſe order therein ſhall bind all parties.* 43 El. c. 2. ſ. 1, 2, 6, 11.

In the church] But the penalty for not meeting in the church ſhall not be inflicted on the overſeers of extraparochial places; becauſe they have no church to meet in. 8 *Mod. E.* 7 *G.*

II. Of ſettlements.

By a ſtatute made in the 12 *R.* 2. (*c.* 7.) The poor were to repair, in order to be maintained, to the places where they were *born.*—By the 11 *H.* 7. *c.* 2. they were to repair to the place where they *laſt dwelled*, or were *beſt known*, or were *born.*—By the 19 *H.* 7. *c.* 12. to where they were *born*, or *made laſt their abode by the ſpace of three years.*——By the 1 *Ed.* 6. *c.* 3. this was explained to be,

where they had been *moſt converſant* by the ſpace of three years.——By the 1 *J.* *c.* 7. they were to be ſent to the place of their *dwelling*, if they had any; if not, to the place where they laſt dwelt by the ſpace of *one* year; if that could not be known, then to the place of their *birth*. —So that there were two kinds of ſettlement all along; by birth, and by inhabitancy, firſt for any indeterminate time, next for three years, then for one year. And this laſt continued to the time of the ſtatute of the 13 & 14 *C.* 2. *c.* 12. which reduced the reſidence from the term of one year, to the ſpace of forty days. Which ſtatute of the 13 & 14 *C.* 2. will often occur in the following ſections, being the foundation of all the ſettlements as they ſtand at this day; upon which act there have been more caſes adjudged, than upon any other act in the ſtatute book.

But that I may treat diſtinctly, and as clearly as may be, concerning this ſubject of ſettlements, (after having firſt premiſed one general rule which controuls almoſt all the caſes of ſettlements, *viz.* That *no ſettlement can be legal, which is brought about by practice or compulſion*; Read. Tit. *Poor*) I ſhall proceed in the following method:

i. Of perſons having no ſettlement.

ii. Of certificates.

iii. Of ſettlement by birth, viz. *of baſtards, and others.*

iv. Of the ſettlement of children with their parents.

v. Of ſettlement by apprenticeſhip.

vi. Of ſettlement by ſervice.

vii. Of ſettlement by marriage.

viii. Of ſettlement by continuing forty days after notice.

ix. Of ſettlement by paying pariſh rates.

x. Of ſettlement by ſerving a pariſh office.

xi. Of ſettlement by renting ten pounds a year.

xii. Of ſettlement by a perſon's own eſtate.

i. Of perſons having no ſettlement.

Whereas the number of poor within England *and* Wales, *is very great and burthenſome; and whereas, by reaſon of ſome*

defects in the law, poor people are not reſtrained from going from one pariſh to another,——it is enacted, that within forty days after any ſuch perſons ſhall come to ſettle in any tenement under 10l a year, two juſtices (1 Q.) *may remove them to the place where they were laſt legally ſettled.* 13 & 14 C. 2. c. 12. ſ. 1.

Poor within England *and* Wales] By theſe words of reſtriction, and the word [*ſuch*] afterwards, which ſeems to have reference to thoſe kinds of poor only, and by the direction of *removing them to the place where they were laſt legally ſettled*, which can only mean where they were laſt legally ſettled within the then kingdom; it may ſeem, that other poor, not belonging to *England* or *Wales*, are not within the regulations of this ſtatute.

And in *Conrad*'s caſe, T. 6 *W.* it was adjudged and declared as follows: A woman and her two children landed at *Harwich* from *Holland*, and removing to another place, were ſent back by order of two juſtices. But by the court: The landing makes no ſettlement; and the order was quaſhed. And *Eyre* J. (*Holt* Ch. J. being abſent) ſeemed to be of opinion, that this is a caſe omitted out of the ſtatute. *Comb.* 287.

And if there is a defect in the law with reſpect to the ſubjects of a foreign realm, the caſe of a *Scotchman* or *Iriſhman* in *England* ſeemeth to be not much different, except only when they ſhall become vagrants, for in ſuch caſe they may be ſent into *Scotland* or *Ireland*: But otherwiſe, if they be able to maintain themſelves, and commit no act of vagrancy, it doth not appear that they can be removed by order of two juſtices, as perſons likely to become chargeable. By which means they ſeem to be in a better condition in *England*, than the *Engliſh* ſubjects: For that, not being removeable, until they be forced to aſk relief, and ſo thereby become vagrants, as wandring abroad and begging; they may continue undiſturbed, without the intanglements of a certificate, and conſequently are in a better capacity of gaining ſettlements, if not for themſelves, yet for their children born here, and for their ſervants and apprentices.

Within forty days] The ſtatute of the 1 *J.* 2. requires, that ſuch 40 days continuance ſhall not make a ſettlement, but from the time of delivering notice in writing; and by the 3 *W.* it muſt be from the time of the publication of ſuch notice in the church: But it hath always been underſtood, that a perſon not removeable need not to give ſuch notice; and that a perſon continuing 40 days *unremoveable*, and

and a perſon *not removed* for 40 days after ſuch notice given and publiſhed, ſhall equally gain a ſettlement. Now the following caſe happened, *E.* 2 *G.* between the pariſhes of St. *Giles* and St. *Margaret:* An *Engliſhwoman* was married to a foreigner, who had no ſettlement in *England*; the huſband continued for the ſpace of 40 days in a pariſh unremoveable, for that there was no place to which he could be removed; and it was urged, that the wife continuing with him, as part of his family for 40 days unremoveable, ſhe did thereby gain a ſettlement: But by *Holt* Ch. J. Where a perſon ſtays 40 days in a place, whence he hath a right not to be removed, that gains a ſettlement; otherwiſe, where he only ſtays in a place, becauſe they do not know where to remove him. And in this caſe, he ſaid, that he did not know that a foreigner had a right to be maintained in any place to which he came, but that they might let him ſtarve. 1 *Seſſ. C.* 97.

But there is another thing to be conſidered. It appears, in that caſe, that there was a *terminus a quo*, but not a *terminus ad quem*; or in other words, that the man's ſituation in the pariſh was not ſuch as the law calls unremoveable, as if he had rented a tenement of 10l a year; but that in fact he was removeable, if they had known whither to have ſent him. But put the caſe, that he had rented a tenement of 10l a year; or, which is the ſame thing, that a *Scotchman* or *Iriſhman* had rented a tenement of 10l a year: The queſtion is, Whether by continuing thereupon 40 days unremoveable, he would thereby have gained a ſettlement in purſuance of this ſtatute? If it is anſwered in the affirmative, then this will follow; that if he comes to reſide upon a tenement under 10l a year, and gives notice in writing, and cauſes the ſame to be publiſhed as the law requires, and continues 40 days after ſuch publication *unremoved*, he muſt by the ſame ſtatute gain a ſettlement. And if ſo, a *Scotchman* or *Iriſhman* may ſettle himſelf and his family in 40 days time, in any pariſh whatſoever, where he can procure any little cottage to live in, by giving and cauſing to be publiſhed ſuch notice as aforeſaid. On the other hand, if we have recourſe to the obſervation above mentioned, and ſay, that this ſtatute extends only to the poor of *England* and *Wales*, then this will follow; that a *Scotchman* or *Iriſhman* can gain no ſettlement in *England* by virtue of this ſtatute, and if not by this, then not by any other of the ſubſequent ſtatutes concerning ſettlements, for that they are all relative thereunto, and depending thereupon; that is to ſay, in theſe circumſtances a *Scotchman* or *Iriſhman* can gain no ſettlement in *England*, neither by renting 10l a year, nor by continuing

tinuing 40 days after notice, nor by apprenticeſhip, nor by ſervice, nor by paying pariſh rates, nor by ſerving a pariſh office.——The practice ſeems to be univerſally allowed in favour of the former opinion.

ii. Of certificates.

Before we come to treat eſpecially of ſettlements, it will be neceſſary to ſpeak ſomewhat of certificates, as affecting ſettlements ſeveral ways.

By the 13 & 14 *C.* 2. *c.* 12. Power is given upon complaint of the churchwardens or overſeers, within 40 days after a perſon is come to ſettle on any tenement under 10l a year, unto two juſtices (1 Q.) to remove ſuch perſon to the place where he was laſt legally ſettled, *unleſs he give ſufficient ſecurity for diſcharge of the pariſh, to be allowed by the ſaid Juſtices.* ſ. 1.

And by the 8 & 9 *W.* *c.* 30. it is enacted as follows: Foraſmuch as many poor perſons chargeable to the place where they live, merely for want of work, would elſewhere maintain themſelves, but not being able to give ſuch *ſecurity* as may be expected, on their coming to ſettle in any other place, it is therefore enacted, That *if any perſon who ſhall come into any pariſh or place there to reſide, ſhall at the ſame time procure, bring, and deliver to the churchwardens or overſeers of the pariſh or place where he ſhall come to inhabit, or to any of them, a certificate, under the hands and ſeals of the churchwardens and overſeers of any other pariſh, townſhip or place, or the major part of them, or of the overſeers where there are no churchwardens; to be atteſted by two or more credible witneſſes; thereby owning and acknowledging the perſon mentioned in the ſaid certificate, to be an inhabitant legally ſettled in that pariſh, townſhip, or place: Every ſuch certificate, having been allowed of and ſubſcribed by two juſtices of the place from whence the certificate ſhall come, ſhall oblige the ſaid pariſh or place, to receive and provide for the perſon mentioned in the ſaid certificate, together with his family, as inhabitants of that pariſh, whenever they ſhall happen to become chargeable to, or be forced to aſk relief of the pariſh, townſhip, or place, to which ſuch certificate was given: And then and not before, it ſhall be lawful for ſuch perſon, and his children, tho' born in that pariſh, not having otherwiſe acquired a legal ſettlement there, to be removed, conveyed, and ſettled in the pariſh or place, from whence ſuch certificate was brought.* ſ. 1.

By the 9 & 10 *W.* *c.* 11. *No perſon who ſhall come into any pariſh by ſuch certificate, ſhall be adjudged by any act whatſoever*

to

to have procured a legal ſettlement in ſuch pariſh, unleſs he ſhall really and bona fide *take a leaſe of a tenement of the yearly value of* 10*l*, *or ſhall execute ſome annual office in ſuch pariſh, being legally placed in ſuch office.*

By the 12 *An. ſt.* 1. *c.* 18. *ſ.* 2. *If any perſon ſhall be an apprentice bound by indenture, or be a hired ſervant, to any perſon who came into or ſhall reſide in any pariſh, townſhip, or place, by means or licence of ſuch certificate, and not afterwards having gained a legal ſettlement there; ſuch apprentice or ſervant ſhall not be adjudged thereby to have any ſettlement in ſuch pariſh, townſhip, or place; but ſhall have their ſettlements in ſuch place as if they had not been apprentices or ſervants as aforeſaid.*

And by the 3 *G.* 2. *c.* 29. *The witneſſes who atteſt the execution of the certificate by the churchwardens and overſeers, or one of the ſaid witneſſes, ſhall make oath before the juſtices who are to allow the ſame, that ſuch witneſs or witneſſes, did ſee the churchwardens and overſeers of the poor, whoſe names and ſeals are thereunto ſubſcribed and ſet, ſeverally ſign and ſeal the ſaid certificate; and that the names of ſuch witneſſes, atteſting the ſaid certificate, are of their own proper hand writing: Which ſaid juſtices ſhall alſo certify, that ſuch oath was made before them. And every ſuch certificate ſo allowed, and oath of the execution thereof ſo certified by the ſaid juſtices, ſhall be taken, deemed, and allowed, in all courts whatſoever, as duly and fully proved, and ſhall be taken and received as evidence, without other proof thereof.* ſ. 8.

The form of which certificate may be this:

To the churchwardens and overſeers of the poor of the pariſh of Penrith *in the county of* Cumberland.

WE *the churchwardens and overſeers of the poor of the pariſh of* Orton *in the county of* Weſtmorland, *do hereby certify, own and acknowledge, that* A. L. *yeoman, is an inhabitant legally ſettled in our pariſh of* Orton *aforeſaid. In witneſs whereof we have hereunto ſet our hands and ſeals, the —— day of —— in the year of our Lord ——*

Atteſted by
A. W.
B. W.

A. B. } *Churchwardens.*
C. D. }
E. F. } *Overſeers of the*
G. H. } *poor.*

We J. P. *and* K. P. *eſquires, two of his majeſty's juſtices of the peace in and for the ſaid county of* Weſtmorland, *do allow of the above written certificate. And we do alſo certify, that* A. W. *one of the witneſſes who atteſted the ſame, hath this*

day made oath before us the ſaid juſtices, that he the ſaid A. W. *did ſee the churchwardens and overſeers of the poor of the pariſh of* Orton *aforeſaid, whoſe names and ſeals are thereunto ſubſcribed and ſet, ſeverally ſign and ſeal the ſame; and that the names of* A. W. *and* B. W. *who are the witneſſes atteſting the ſaid certificate, are reſpectively of their own proper hand writing. Given under our hands this ——— day of ———*

Certain general rules concerning certificates.

1. A pariſh cannot be compelled to grant a certificate.

In the caſe of *K.* and St. *Ives*, *H.* 3 *G.* 2. A *mandamus* was moved for, to compel the churchwardens and overſeers to ſign a certificate; but the court rejected the motion as a very ſtrange attempt. 2 *Seſſ. C.* 128.

2. A miſdirection of the certificate will not vitiate it.

The ſtatute doth not require any particular direction; and therefore it is equally effectual, whether addreſſed to any particular place, or addreſſed in general terms, or not addreſſed at all, provided it contains an acknowledgment of the ſettlement of the perſons certified for. As in the caſe of St. *Nicholas* in *Harwich* and *Woolverſtone*, *H.* 15 *G.* 2. The pauper came into the pariſh of St. *Nicholas* in *Harwich*, with a certificate from *Woolverſtone*, addreſſed to the pariſh of *Harwich near Dover court.* The ſeſſions were of opinion, as there was a miſtake in the name of the pariſh in the addreſs of the certificate, that *Woolverſtone* could not be obliged to receive the pauper. But upon debate in the court of king's bench, it was ruled they were: For it is not to be conſidered as a certificate to any particular pariſh, but as a general acknowledgment of his being a pariſhioner of *Woolverſtone*, and is concluſive againſt them for all the world. *Str.* 1163. *Burrow's Settl. Caſ.* 171. [But whether the pariſh of St. *Nicholas* might have been obliged to receive that certificate, directed not to them, but to another place, is a queſtion not determined.]

3. A certificate is not binding unleſs ſigned by the pariſh officers and juſtices.

E. 14 *G.* 3. St. *Michael's* and *Tamworth.* Two juſtices by their order remove *Sampſon Watkins* from the pariſh of St.

St. *Michael*'s to the parish of *Tamworth*, and the sessions upon appeal confirm that order, and state specially, That *Samuel Watkins* father of the pauper *Sampson Watkins* went from the parish of St. *Michael*'s to reside in *Tamworth*, and brought with him a paper writing purporting to be a certificate, in the words and figures following: "To the churchwardens "and overseers of the poor of the parish of *Tamworth* in "the county of *Stafford*. We the churchwardens and over- "seers of the poor of the parish of St. *Michael* in the city of "*Coventry*, do hereby own and acknowledge *Samuel Wat-* "*kins* and family to be inhabitants legally settled in our said "parish of St. *Michael*, and that we will own them as such, "at any time or times hereafter. In witness whereof, we "have hereunto set our hands and seals the 16th day of "*May*, in the year of our Lord 1727. *Thomas Dagley*, "*John Hollyer*, churchwardens. *John Gill*, *Samuel Ed-* "*wards*, overseers of the poor. Attested by *Ralph White-* "*head*, *John Bryan*. Allowed by us whose names are "underwritten, being two of his Majesty's justices of the "peace for the city and county of the city of *Coventry*. "*Abraham Ower* mayor; *Henry Cockram*." That the said *Samuel Watkins* continued to reside in the said parish of *Tamworth*, and had a son born there, to wit, *Sampson Watkins* the present pauper. Which *Sampson* was afterwards bound apprentice to *John Hunter* in the said parish of *Tamworth* for five years, and served him there the whole time under the indenture: That afterwards the said *Samuel* the father came back into the parish of St. *Michael*, and in *May* last the pauper *Sampson* came into the said parish of St. *Michael*, and resided with his father, until he was removed by the order above stated to the parish of *Tamworth* aforesaid; from which order *Tamworth* appealed. Upon the appeal, it appeared, that there has been a uniform and constant usage in the said parish of St. *Michael*, to elect annually six churchwardens and four overseers. And the Sessions being of opinion that the said paper writing purporting to be a certificate, and executed only by four of the parish officers, was not a valid certificate, and consequently that the pauper was at liberty to gain a settlement at *Tamworth* by virtue of the apprenticeship, confirmed the order of the two justices. It was moved to quash both these orders, for that the justices had made an erroneous determination in holding this writing not to be valid. On shewing cause against quashing the orders, it was insisted that the certificate was insufficient, and not within the description of the act, which is express that it must be under the hands and seals of the churchwardens and overseers, or the *major part* of

of them. Now here were ten, and only four have ſigned the certificate. On the contrary it was argued for quaſhing the orders, that the certificate is regular in the form and upon the face of it, and allowed by two juſtices, and compleatly proved. *Tamworth* could not know, nor had any reaſon to ſuſpect, that four were not a majority of the whole number. And if theſe in fact were not the major part, it was a groſs fraud and impoſition upon *Tamworth*. Lord *Mansfield* was not in court. The other three judges thought it a hard caſe upon *Tamworth*, but they held themſelves to be bound down by poſitive law. The ſtatute is expreſs and poſitive, that the certificate muſt be under the hands and ſeals of the churchwardens and overſeers of the poor or the major part of them. And as to fraud, the court cannot preſume fraud, if it be not ſtated. (But Mr. Juſtice *Aſhhurſt* thought the Juſtices might have conſidered it as a fraud.) *Burr. Settl. Caſ.* 770.

H. 8 *G* 3. *Wooton* St. *Laurence* and *Micheldever*. The pariſh officers of St. *Laurence* gave to *Thomas Pryor* the pauper, a common printed form of a certificate, acknowledging him to be ſettled in the ſaid pariſh of St. *Laurence*. It was ſigned and ſealed by the pariſh officers, and atteſted by two witneſſes. But the blanks for the allowance of juſtices were not filled up, and no name of any juſtice ſigned thereto. On his return to the pariſh granting the certificate, they relieved him until the time of this removal. It was urged, that this certificate, not being ſigned by the juſtices, was not binding. On the contrary, it was urged, that it was a full acknowledgment that the pauper was their pariſhioner; and the pariſh of St. *Laurence* having all along ſubmitted to it, they are concluded from diſputing it. And the pariſh ought to be bound by the act of their overſeers, who are of their own chuſing. Many acts or even omiſſions of the pariſh officers may bind their pariſh. But here is a ſolemn acknowledgment under their hands and ſeals, that the pauper was ſettled in St. *Laurence*.——But by lord *Mansfield* and the court: A certificate cannot conclude the pariſh, unleſs properly ſigned. The certificate act ſpecifies certain checks and guards upon certificates. The juſtices are not obliged miniſterially to allow and ſign a certificate, They have a diſcretion to allow it, or not to allow it, if it be liable to objection. The act requires a concluſive certificate to be under the checks and guards therein particularized. This certificate wants them. Therefore it is no certificate within the act. And if it is

not

not a certificate within the act, it cannot conclude the parish. *Burrow's Settl. Caſ.* 581.

H. 13 *G.* 3. *Aſhton Keynes* and *South Cerney.* The atteſtation of the certificate was thus: "Atteſted by *Anthony* "*Brown* + his mark, *Paul Jenkinſon.*" The allowance of the juſtices was, "We two of his majeſty's juſtices of the "peace for the ſaid county do allow of the above written "certificate: And we do alſo certify, that the ſaid *Paul* "*Jenkinſon* came this day before us and made oath, that "he was preſent with the other witneſs above mentioned, "and did ſee the ſaid churchwardens and overſeers of the "poor ſeverally ſign and ſeal the ſaid certificate, and that "*his* name is of his own proper handwriting." It was objected, that this was not a proper certificate, becauſe the name or mark of *Anthony Brown*, one of the witneſſes atteſting the execution of it, was not proved before the juſtices to be of that witneſs's own proper handwriting; whereas in this caſe *Paul Jenkinſon*, one of the witneſſes, only proves that his own name is of his own proper handwriting, but there is no ſort of proof, either by him or any one elſe, of the handwriting or mark of *Anthony Brown* the other witneſs. But the whole court were extremely clear, that this was ſufficient proof of *Anthony Brown*'s atteſtation. *Jenkinſon* ſwears, that he was preſent with *Brown*, and did ſee the churchwardens and overſeers ſeverally ſign and ſeal the ſaid certificate. *Bur. Set. Caſ.* 725. [The diſtinction ſeems to be this: The juſtices are called in, upon a two-fold account; firſt, to allow of the certificate, if they think proper; and ſecondly, to examine the witneſſes concerning the execution. The firſt is neceſſary; becauſe without their allowance, the certificate is not good: But the ſecond is not neceſſary, for if they do not examine the witneſſes at all, the certificate is valid; the examination of the witneſſes being only intended to ſave thoſe witneſſes upon occaſion the trouble of attending, ſometimes perhaps at a great diſtance, to prove the execution of the certificate. And ſo the ſtatute expreſſes it, that *the certificate ſo allowed, and oath of the execution ſo certified by the juſtices, ſhall be deemed in all courts whatſoever as duly and fully proved and received as evidence without other proof thereof.* The reaſon in the preſent caſe why the proof of the atteſtation is ſo cautiouſly expreſſed is obvious, namely, becauſe one of the witneſſes is a markſman; and it would be abſurd to ſwear that the name of a perſon who cannot write is of his own proper handwriting.]

4. A certificate extends to children born after the granting thereof.

In the caſe of *Sherborne* and *Thornford*, *E.* 15 *G.* 2. *Humphrey Eyres*, father of *George Eyres*, the pauper, came by certificate from *Thornford* into the pariſh of *Sherborne*, with his wife and family; by which certificate, the ſaid *Humphrey* and his wife and family were owned to be legal inhabitants of *Thornford*. In about two years afterwards, his wife died, and ſhortly after he married a ſecond wife, by which ſecond wife he had the pauper *George Eyres*. Which ſaid *George*, when he was about 16 years of age, was hired for a year, and ſerved that year in the ſaid pariſh of *Sherborne*. The principal queſtion was, Whether the ſon of a certificate perſon, born after the certificate, can gain a ſettlement otherwiſe than a certificate perſon himſelf can. And by the court, The 8 & 9 *W. c.* 30. extends not only to the certificate man himſelf, but likewiſe to all his family and all his children, whether born before or after the certificate. And the 9 & 10 *W. c.* 11. declares what ſhall gain them a ſettlement in that pariſh to which they come by certificate, and reſtrains it to two methods only, which it ſpecifies; and ſervice is neither of theſe two methods to which it is reſtrained. *Burrow's Settl. Caſ.* 182.

So in the caſe of *Bray* and *Shotteſbrooke*, *H.* 19 *G.* 2. The father of the pauper *James Gould* came by certificate from *Shotteſbrooke* to *Bray*; after which, the ſaid pauper was born, and at the age of 20 years was hired for a year and ſerved the ſame in *Bray*. It was objected, that the ſon being born after his father came from *Shotteſbrooke* to *Bray*, cannot be conſidered within the words of the act as *coming into the pariſh by certificate*, and being 20 years of age he ought not to be conſidered as part of his father's family and dependent upon his ſettlement. But by the court, the caſe of *Sherborne* and *Thornford* is in point, and was ſettled upon good reaſon; becauſe as the ſon has the advantage of the certificate, and cannot be removed until actually chargeable, ſo he ought on the other hand to be bound by the terms of it. *Bur. Settl. Caſ.* 259.

And the like was adjudged in the caſe of *Buckingham* and *Maid's Moreton*, *H.* 25 *G.* 2. As a point clearly determined and ſettled. *Bur. Settl. Caſ.* 314.

5. A certificate is concluſive againſt the pariſh certifying.

M. 9 *An. Honyton* and St. *Mary Axe.* The queſtion was, whether the pariſh granting the certificate was bound thereby as to the pariſh only to which the certificate was granted, or concluded as to all pariſhes whatſoever? *Parker* Ch. J. delivered the opinion of the court: Before the ſtatute, a certificate was only an evidence of a private undertaking between the parties, in the nature of a contract; but now it is a ſolemn acknowledgment, like the conuſance of a fine; and thereby the party is owned to be legally ſettled there: and as all other pariſhes on this certificate are bound to receive him, ſo the pariſh that certifies is concluded as to all other pariſhes. 2 *Salk.* 535. *Foley.* 177.

T. 5 *G. New Windſor* and *White Waltham.* The pauper being ſettled in *White Waltham*, where he had lived for two years with a woman who was reputed his wife, went with a certificate from *White Waltham* owning them as huſband and wife into the pariſh of *New Windſor*, where they had ſix children. The man dies, and the woman ſwearing they had never been married, the juſtices adjudge the children to be baſtards, and ſettled in *New Windſor* where they were born. But by the court, the certificate is concluſive to the pariſh of *White Waltham*, and they are not to be admitted to diſpute the validity of the marriage, and therefore the ſix children, being actually chargeable to *New Windſor*, muſt be ſent to *White Waltham.* Str. 186.

T. 19 *G.* 2. *Headcorn* and *Maidſtone.* The pariſh of *Maidſtone* gave a certificate to *Headcorn*, acknowledging *Richard Burden*, and *Mary* his wife, and their four children, to be legally ſettled at *Maidſtone.* Afterwards it appeared, that *Mary* was not his lawful wife, but that he had a former wife then living. Upon which, *Maidſtone* acknowledged the ſettlement of the real and true wife, but not of the ſaid *Mary* and her children; and pleaded that it would be hard that they ſhould be forced to take two wives, and different children. But, by the court, The pariſh that certifies muſt take care for whom they certify; and the certificate is concluſive. The pariſh of *Maidſtone* have by this certificate expreſly acknowledged the ſaid *Mary* to be their legal inhabitant; and the pariſh of *Headcorn* were thereupon bound to receive her. Therefore when ſhe becomes chargeable, the pariſh

pariſh of *Maidſtone* are obliged to provide for her and her children by *Burden*. *Maidſtone* ſay they were deceived; But it was their own fault or folly if they were ſo; and *they* deceived *Headcorn:* Therefore they ought to ſuffer, and not *Headcorn*. *Seſſ. C. V.* 2. 200. *Str.* 1233. *Burrow's Settl. Caſ.* 253.

H. 13 *G.* 3. *Toſtock* and *Iſlame*. Caſe ſpecially ſtated: That *Edward Parkinſon*, otherwiſe *Jerman*, was born at *Toſtock* of the body of *Elizabeth Parkinſon* ſpinſter, an inhabitant of the pariſh of *Toſtock*; and that *Edward Jerman* legally ſettled in the pariſh of *Iſlame*, but then reſiding in *Toſtock*, was the putative father of the ſaid child: That ſoon after the birth of the ſaid child, *Elizabeth Parkinſon* was married at *Toſtock* to the ſaid *Edward Jerman:* That ſome ſhort time after the ſaid marriage, the pariſh officers of *Toſtock* warned the ſaid *Edward Jerman* to get a certificate from *Iſlame*; whereupon *Edward Jerman* applied to the pariſh officers of *Iſlame* for ſuch a certificate for himſelf, his wife, and his ſon, without informing them that the ſaid *Edward* the ſon was born a baſtard, and that they knew nothing of it that he was ſo: That *Iſlame* granted a certificate, acknowledging *Edward Jerman*, *Elizabeth* his wife, and *Edward* their ſon, to be their pariſhioners. It was contended, that the certificate was improperly obtained, by the ſuppreſſion of a fact which ought to have been diſcloſed at the time when the certificate was aſked for; and that there never was a caſe, where the certificate was held to be concluſive when obtained by fraud on the ſuppreſſion of facts, but only where they have granted them by miſtake; for againſt miſtake they might have been guarded. But it not appearing that the pariſh officers recommended to him to get a certificate for the ſon, nor that he to whom the certificate was granted deſired the ſon to be included in it, the certificate was held, on the authority of the caſe of *Headcorn* and *Maidſtone*, to be concluſive. *Bott.* 392. *Bur. Set. Caſ.* 737.

6. A certificate is not binding againſt a ſubſequent ſettlement.

In the caſe of *Harriſon* and *Lewis*. A certificate promiſing to receive the perſons whenever they become chargeable, is not concluſive againſt a ſettlement obtained afterwards; for though it be according to the agreement between the pariſhes, yet a private agreement in this reſpect ſhall not alter the law. 3 *Salk.* 253.

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7. A certificate is not reſtrictive from gaining a ſettlement in a third pariſh.

M. 14 *G.* 2. *Petham* and *Dymchurch*. The pauper was bound apprentice to a certificate man in *Tenterden*, and after living with him there two years, was by him aſſigned over to a pariſhioner of *Lidd*, with whom he inhabited and ſerved for the remainder of the ſeven years. And the court were all of opinion, that ſuch aſſignment being good as to the purpoſe of a ſettlement, the apprentice gained a ſettlement in *Lidd* the uncertificated pariſh. *Str.* 1147.

In the aforeſaid caſe of *Sherborne* and *Thornford*, *E.* 15 *G.* 2. it was obſerved by Mr. juſtice *Deniſon* (to which all the court agreed) that a certificate provides for the ſecurity of that pariſh only into which the certificate perſons came to reſide by virtue of ſuch certificate; but doth not exclude a certificate perſon from gaining a ſettlement in another pariſh, in the ſame manner as any other perſon may do. *Burrow's Settl. Caſ.* 186.

H. 21 *G.* 2. *Silton* and *Wincanton*. The father and mother of *John Milbourn* the pauper came from *Silton* with a certificate to *Wincanton*. The ſaid pauper was afterwards born in *Wincanton*, and at 12 years of age was bound out by the pariſh of *Silton* apprentice to a taylor at *Horſington* for 8 years, and ſerved him there. The queſtion was, whether the ſon of a certificate perſon, born in the pariſh to which his father came by certificate, and bound apprentice and ſerving an apprenticeſhip to a maſter in a third pariſh, gains a ſettlement in the third pariſh by ſuch apprenticeſhip? By the court, The pauper in this caſe was a perſon at large, as to every other pariſh except *Wincanton* to whom the certificate was delivered; and therefore he gained a ſettlement at *Horſington*. Burrow's Settl. Caſes. 269.

T. 28 *G.* 2. *High and low Biſhopſide* and *Dacre cum Buerley*. *Jonathan Joy*, a taylor, being ſettled in *Menwith cum Darley*, came from thence with a certificate to the townſhip of *High and low Biſhopſide*, where he reſided for ſome years. Afterwards he purchaſed a freehold houſe, for the ſum of 10l, in the townſhip of *Dacre cum Buerley*: Whereupon he left *Biſhopſide*, and went to inhabit in *Dacre cum Buerley*, to which place he carried his certificate, and delivered it to the proper officer there. During his reſidence at *Dacre cum Buerley*, *John Thackrey* the pauper was bound to him as an apprentice by indenture

ture for 7 years; and ſerved his apprenticeſhip accordingly with his ſaid maſter, who all the time inhabited in his ſaid houſe in the townſhip of *Dacre cum Buerley*. The queſtion was, whether he gained a ſettlement in *Dacre* by ſuch apprenticeſhip? It was argued on the one ſide that he could not; for his maſter himſelf in that caſe reſided under the certificate which he brought with him when he came from *Biſhopſide*, and conſequently the apprentice could not gain a ſettlement with him at *Dacre*. Unto which it was anſwered, that the maſter did not reſide as a certificate perſon at *Dacre*, becauſe living upon his own eſtate there he needed not to have delivered any certificate, and the certificate which he did deliver could have no effect at *Dacre*, as it had before been delivered to *Biſhopſide*, which they ought to have kept for their own protection; and if a certificate had been neceſſary, he ought to have produced another certificate. And of this opinion was the court, and held that the apprentice gained a ſettlement at *Dacre*. Burrow's Settl. Caſ. 381.

T. 28 *G.* 2. *Horſley* and *Hollingſclough*. *Horſley* gave a certificate to *Abraham Cope* and his family, who went with it to *Hollingſclough*, where his ſon the pauper was born. The pauper at 12 years of age went to *Peck*, and was hired and ſerved for a year there; and then returned to *Hollingſclough*. The queſtion upon this caſe was, whether the ſon of a certificate perſon, born in the pariſh to which his parent came by certificate, could gain a ſettlement in a third pariſh by a hiring and ſervice for a year. And the court were clear that this gained a ſettlement in the third pariſh; and that the caſe of *Silton* and *Wincanton* was in point, only with this immaterial difference, that there the ſon's ſettlement was gained by apprenticeſhip, and here by a hiring and ſervice. *Burrow's Settl. Caſ.* 385.

E. 29 *G.* 2. *St. Peter's* in *Nottingham* and *Wilford*. The pariſh of *Beſton* gave a certificate with one *Trentham*, to *St. Peter's*. The certificate man took the pauper *John Wright* to be his apprentice, and the pauper ſerved him ſome conſiderable time in *St. Peter's*. Afterwards, *Trentham* the maſter removed to *St. Mary's*, where the apprentice ſerved him about a year. The two juſtices and the ſeſſions were of opinion, that the certificate extended to *St. Mary's*, though only directed to *St. Peter's*; and conſequently, that the apprentice gained no ſettlement in *St. Mary's*. It was moved to quaſh the orders of the juſtices, becauſe their opinion was contrary to the determination in the caſe of *High and low Biſhopſide*, *viz.* that

that a certificate extends to no other pariſh, but that only to which it is given: And an apprentice gains his ſettlement by the laſt 40 days ſervice; which, in the preſent caſe, was at *St. Mary's*, to which pariſh the maſter was not certificated. And the counſel on the other ſide gave it up, as being exactly the ſame point with the cited caſe of *High and low Biſhopſide*. Burrow's Settl. Caſ. 391.

T. 30 & 31 *G.* 2. *Great Torrington* and *Bideford*. By a certificate from *Lancraſs*, *Mary Bray* came to *Bideford*, and inhabited there ſome years. Then ſhe was bound apprentice by the officers of the pariſh of *Lancraſs*, and lived under the indenture, at *Great Torrington*, for ſeveral years. After the expiration of the apprenticeſhip, ſhe hired for a year, and ſerved that year in *Bideford*. The queſtion was, whether by this hiring and ſervice ſhe gained a ſettlement at *Bideford*, to which place ſhe had come by certificate? And it was adjudged (the point being clearly given up, as in the former caſe), that having ſerved an apprenticeſhip in a third pariſh, ſhe was become quite clear of the certificate, and therefore was as much at liberty to gain a new ſettlement in *Bideford*, as any uncertificated perſon could be. *Burrow's Settl. Caſ.* 428.

And the like was adjudged in the ſame term, in the caſe of *Keynſham* and *Hanham*. Burrow's Settl. Caſ. 429.

8. A certificate is diſcharged by an eſtate of a man's own.

Although the ſtatute of the 9 & 10 *W.* ſays, that no perſon who ſhall come into any pariſh by certificate, ſhall be adjudged by any act to have gained a ſettlement there, unleſs he ſhall really and *bona fide* take a *leaſe* of a tenement of 10l. a year, or execute ſome annual office in the pariſh; yet it hath always been holden, that a man may not be removed from his own, whether it come to him by deſcent, deviſe, or purchaſe; and continuing thereon 40 days, he ſhall thereby gain a ſettlement, provided that in caſe of purchaſe the conſideration *bona fide* paid amount to the ſum of 30l; as will appear fully from ſeveral caſes hereafter following.

9. A certificate is diſcharged by a removal.

H. 28 *G.* 2. *Sudbury* and *Uttoxeter*. *Thomas Bladon*, being ſettled at *Sudbury*, came by certificate with his wife

and children to *Uttoxeter*. *Thomas* died there, and his wife and children remaining at *Uttoxeter* under the certificate, became chargeable, and were removed and ſent back to *Sudbury*. In about a year after, *John Bladon*, one of the ſaid children, was bound apprentice in the pariſh of *Uttoxeter*, and ſerved out his time there. The queſtion was, whether by ſuch apprenticeſhip he gained a ſettlement at *Uttoxeter*? By *Ryder* Ch. J. and the court: The removal in this caſe to *Sudbury* did reſtore the pauper to a new right of gaining a ſettlement; for the certificate is as it were *functus officio*, and is diſcharged by the order of removal. It can have its effect but once; and after the removal back, it is totally at an end; and the certificate perſon is reſtored as fully to the capacity of gaining a ſettlement, as if there had been no certificate at all: The law is ſo far from looking upon a certificate as continuing after an order of removal; that the pauper cannot return to the place from which he was removed, without incurring a penalty. And it was adjudged that the pauper gained a ſettlement at *Uttoxeter*. Burrow's Settl. Caſes. 373.

10. Whether a certificate is diſcharged by the pauper's deſerting it.

H. 24 *G.* 2. *Sowerby* and *Halifax*. The pauper's father came with a certificate from *Halifax* to *Sowerby*, and during his reſidence there under that certificate the pauper was born. The father died. The widow and the pauper her ſon went back voluntarily to *Halifax*. After ſome time, they went with a new certificate from *Halifax* to another place; and having reſided under the new certificate for ſome time, they returned again to *Halifax*. After which, the pauper was bound apprentice in the pariſh of *Sowerby* to which the firſt certificate was given, and there ſerved out his apprenticeſhip. And the ſeſſions being of opinion that the pauper, at the time of his being bound apprentice as aforeſaid, was not, nor ought to be conſidered as a perſon who came into the townſhip of *Sowerby* aforeſaid by certificate, he not having lived or reſided within the ſaid townſhip during the ſpace of nine years and upwards next before the time of his being bound apprentice as aforeſaid, and that therefore he obtained a ſettlement by his apprenticeſhip in *Sowerby* aforeſaid, did therefore confirm the order of the two juſtices for ſending him to *Sowerby*. It was moved to quaſh theſe orders of the juſtices.

juſtices. But it appearing likewiſe upon the ſtate of the caſe that the indenture was not ſtamped, the orders were quaſhed upon that conſideration, without determining how far the deſertion of a certificate ſhall deſtroy the effect of it. *Burrow's Settl. Caſ* 408.

T. 29 & 30 *G.* 2. *Taunton St. Mary Magdalen* and *Taunton St. James's*. *Robert Bagg*, the grandfather of the pauper, came with a certificate from *Taunton St. James's* to *Taunton St. Mary Magdalen's*. Afterwards he went back into the pariſh of *Taunton St. James's*, and there had *Robert* his ſon, the father of the preſent pauper. And afterwards *Robert*, the pauper's father married in *Taunton St. James's*, and went and lived with his wife and family, in a houſe in the ſaid pariſh of *Taunton St. James's*, apart from his father; and had iſſue *Robert* the pauper, born in *Taunton St. James's*. *Robert* the grandfather died in *Taunton St. James's*. Then *Robert* the father died. And *Robert* the pauper was bound an apprentice by the pariſh of *Taunton St. James's*, into the pariſh of *Taunton St. Mary Magdalen*; and there ſerved his apprenticeſhip. It was urged, that by virtue of the certificate given with his grandfather to the ſaid pariſh of *Taunton St. Mary Magdalen*, the ſaid apprentice gained no ſettlement in *Taunton St. Mary Magdalen*, but continued ſettled in the pariſh of *Taunton St. James's*, which had given the certificate. But the court (without going into the queſtion whether the certificate act extends to grandchildren, or whether the ſon of this certificate man was emancipated from his father's family or not, as theſe points were not neceſſary to be diſcuſſed in this caſe) delivered their opinion, that the certificate itſelf was of no force, at the time of the grandſon's being put apprentice in *Taunton St. Mary Magdalen's*, but was then totally at an end. For in ſo long a courſe of time, which was 54 years after granting the certificate, and after ſuch a deſertion, it was reaſonable to conclude that there was an end of it. It was abſolutely waved and deſerted. And the father and grandfather of this pauper could not have gone to *St. Mary Magdalen's* again without a new certificate. It is a good deal like the caſe of *Uttoxeter*, where the certificate was conſidered as *functus officio*, and as if it had never at all exiſted; being in that caſe totally at an end, as being ſatisfied, and having had its full and whole effect, by the removal of the paupers (under an order of juſtices indeed) to the pariſh who had given that certificate. And in the preſent caſe, the certificate being at an end, the apprenticeſhip of *Robert Bagg* the pauper will have juſt the

ſame effect, as if no ſuch certificate had ever been given at all, or were any ingredient in the caſe; that is to ſay, the apprentice is ſettled in *Taunton St. Mary Magdalen's*. Burrow's Settl. Caſ. 402.

H. 5 *G.* 3. *Spotland* and *Caſtleton*. The pauper *John Hamer* was bound apprentice to a certificate man at *Caſtleton*, and ſerved his maſter at *Caſtleton* for ſome years. Then he removed with his maſter to *Spotland*, where he ſerved him 40 days and upwards; and then was married to a young woman whoſe parents lived in *Caſtleton*; and till the expiration of the apprenticeſhip, which was upwards of half a year, the apprentice worked in the day time with his maſter in *Spotland*, but went and lodged with his wife at her parent's houſe at *Caſtleton*. It ſeemed to be agreed by the court (independently of a certificate) that wherever the ſervant or apprentice lodges, there is his ſettlement. And in this caſe it was urged, that the certificate was out of the queſtion. For by the apprentice reſiding with his maſter 40 days in *Spotland*, he had gained a ſettlement there; as they did not reſide in *Spotland* under the certificate. Conſequently, he came back from *Spotland* to *Caſtleton* free from the certificate, juſt as if there had been no certificate at all. And by lodging there above 40 days, he gained a ſettlement there, ſubſequent to that he had gained in *Spotland*. On the other hand, it was argued, that the certificate was ſtill ſubſiſting, and the maſter's removal to *Spotland* was voluntary, and not under any order of removal. The maſter is not ſtated to have gained any ſettlement in *Spotland*. So that he continued a certificate man to *Caſtleton*; and the apprentice was part of his family. By the court: The maſter, who was a certificate man at *Caſtleton*, gained no new ſettlement in *Spotland*; and the pauper ſtill remained an apprentice to this certificate man. The maſter may ſtill go back to *Caſtleton*, the pariſh to which he was certificated. Indeed, it hath been determined, that if a certificate perſon goes to another pariſh, and becomes chargeable to it, and is by an order of juſtices removed from thence to the pariſh which gave the certificate, then the certificate is at an end, it is ſatisfied, it is *functus officio*, and it can have its effect but once. But here the removal is voluntary, not by force. The certificate ſubſiſts. And the apprentice remains part of his maſter's family. He was ſo at *Spotland*; and all along continued to be ſo. The certificate act ſays, that the apprentice ſhall not gain a ſettlement in the pariſh to which his maſter came by certificate. But as this apprentice hath gained an intermediate ſettlement, he ought to be ſent to that

that ſettlement which he hath intermediately gained. And the court were unanimous, that his ſettlement was at *Spotland*. Burrows's Settl. Caſ. 527.

T. 20 *G.* 3. *Frampton* and *Tretherne*. Two juſtices removed the wife and child of *Samuel Minett* from *Frampton* to *Tretherne* On appeal, the ſeſſions quaſh that order, and ſtate the following caſe: In the year 1751, the pariſh of *Tretherne* granted a certificate to the pariſh of *Frampton*, acknowledging *Job Minett* and *Anne* his wife to be ſettled in *Tretherne*. Under which certificate they lived in *Frampton* two or three years, when they voluntarily returned to *Tretherne*, and had afterwards a ſon named *Samuel* born there. *Job* the father continued to live in *Tretherne* for 17 or 18 years; when having a relation in *Frampton* dead, he went by himſelf (his wife being dead) to poſſeſs himſelf of the effects, and remained there about ſix months, when being taken ill, he was by the pariſh of *Tretherne* recommended to *Glouceſter* infirmary, and there died. But before he went to *Frampton* to take poſſeſſion of his relation's effects, *Samuel* the ſon was hired for a year, and ſerved the ſame in *Frampton*, and ſo continued for ſeveral years until after his father died. *Samuel* afterwards married and had a child, and his wife and child were the paupers that were removed from *Frampton* to *Tretherne*.—In ſupport of the order of removal, the counſel obſerved, that in the caſe of *Taunton* the circumſtances were very particular. The extraordinary length of time during which the certificate had ſlept, was conſidered as a waiver of it, but they ſeemed to doubt of the law of that caſe: It has been ſettled, they ſaid, in later caſes (as in that of *Spotland*), that a voluntary removal of a certificated perſon from the pariſh to which he has been certified, will not vacate a certificate; and this, without any regard to any interval or length of time. If a pauper can, by length of time, deſert or annul a certificate, how is the line of limitation to be drawn? If a month's abſence from the pariſh will not do, will a year, or ten years, or eighteen years? By analogy to the ſtatute of limitations, twenty years at leaſt ought to be required. Here, the certifying pariſh did not look upon the certificate as at an end; for they recommended the father to the *Glouceſter* infirmary, conſidering him ſtill as their own poor.——Lord *Manſfield:* The exact circumſtances of this caſe have not occurred before, though the principle of deſertion by long diſuſe is to be found in that of *Taunton*. But, here, no faith was given by the pariſh of *Frampton* to the certificate as to *Samuel*, whom they never heard of till he came there as an emancipated perſon. This caſe to me ſeems

much ſtronger than that of *Taunton*. *Willes* and *Aſhurſt* juſtices, of the ſame opinion. There are no reaſons ſtated for the judgment in the caſe of *Spotland*, and it doth not appear either that the court meant to contradict, or that the deciſion did contradict the caſe of *Taunton*. And the order of the two juſtices was quaſhed, and the order of ſeſſions affirmed. *Douglas*. 402.

11. Whether any more of the certificated family can be removed back, than the individual that aſks relief.

This point doth not appear from any printed report to have been yet determined. In the caſe of *Martleſham* and *Framlingham*, *T.* 13 *G.* 3. it came to be debated, but the cauſe went off upon another circumſtance. The caſe was, *Simon Churchyard* and *Elizabeth* his wife, being legally ſettled in *Framlingham*, obtained a certificate for themſeves and for *Rebecca* and *Mary* their then children; and by virtue thereof went to *Martleſham*, reſided there about 15 or 16 years, and had two other children born there, *William* and *Elizabeth*. None of the ſaid certificated perſons ever aſked relief, or ever became chargeable to the pariſh of *Martleſham*, except that the ſaid *Rebecca*, living then with her father as part of his family, and being big with child (which was afterwards born a baſtard), applied to the pariſh officers of *Martleſham* for relief, her father not being able, in point of circumſtances, to aſſiſt her. Whereupon the pariſh officers of *Martleſham* gave her 2*s*. and immediately after ſuch relief was given, procured an order of two juſtices to remove the ſaid *Simon Churchyard*, *Elizabeth* his wife, *Rebecca Churchyard* ſpinſter, aged 18 years, *William* aged 15 years, and *Elizabeth* aged 6 years, from *Martleſham* to *Framlingham*. It was objected, that none of the family ought to have been ſent back to *Framlingham*, but the perſon who aſked relief of *Martleſham*: The juſtices could not remove the whole family, nor any more of them than aſked relief, which was *Rebecca* only: The father never aſked relief for himſelf or for any of his family, not even for this daughter: ſhe was manifeſtly a grown perſon; and aſked relief for herſelf, and for no one elſe: Theſe ſeveral perſons are independent each on the other: and that one only who aſked relief ought to be removed. Unto which it was anſwered, that the pariſh which gives the certificate is obliged to receive and provide for the perſon mentioned in it *together with his or her family*, whenever he, ſhe, or they ſhall happen to become chargeable to or be forced to aſk relief of the pariſh to

which ſuch certificate was given. It is not neceſſary that all of them ſhould aſk relief. If relief is aſked by any one of the family, the whole family may be removed. *Rebecca* was a part of this man's family, and he was not able to maintain her. Therefore ſhe aſked relief of the pariſh. Conſequently, the certificate man's family being become actually chargeable, the juſtices were authorized to remove them all back to the pariſh which gave the certificate.—Lord *Mansfield* was gone. The reſt of the court gave judgment upon another point, which rendered it unneceſſary to go into a formal diſcuſſion of this latter point. But Mr. juſtice *Aſton* inclined to be of opinion, that if ſeveral perſons reſide in a pariſh under the ſame certificate, the aſking relief by a ſingle one of them would not render the reſt removeable. The certificate act ſays, that the pariſh who gives the certificate ſhall receive and provide for the perſon mentioned in it, together with his family, whenever he or they ſhall happen to become chargeable or aſk relief: and then, and not before, it ſhall be lawful for any ſuch perſon, and his or her children, to be removed to the pariſh from whence ſuch certificate was brought. And it muſt be adjudged by the juſtices, that ſuch perſon is actually become chargeable, before they can legally make an order of removal. Now how can the juſtices be authorized to make ſuch an adjudication upon a perſon who in fact is not become chargeable, nor ever has aſked relief? *Bur. Set. Caſ.* 748. [But there ſeem to be ſome circumſtances in this caſe, from whence perhaps it might be difficult to form one uniform general rule.]

iii. Of ſettlement by birth; viz. *of baſtards, and others.*

It is ſometimes difficult to prove the place of the birth of a pauper. The two topics commonly made uſe of for this purpoſe are in their own nature inconcluſive. The firſt queſtion that is commonly aſked a pauper is "Where "were you born?" Unto which it is impoſſible for him to give a determinate anſwer; and his teſtimony is more or leſs credible according to the means he has had of information. The *pariſh regiſter* is a proof, not of the birth, but of the chriſtening; which are not always in the ſame place: beſides that the regiſter is no evidence at all of the *identity* of the perſon. In the caſe of *Creech St. Michael* and *Pitminſter*, *E.* 14 *G.* 3. the *mother* of the pauper was ſubpœnaed, but did not attend; and no account was given of her being under any legal diſability of attending.

For which reaſon the ſeſſions quaſhed the order of the two juſtices, as not being ſupported by the beſt evidence that the nature of the caſe would admit of. On the other hand, a copy of a regiſter, taken from the pariſh regiſter of *Pitminſter*, was produced, "Chriſtenings 1735, *John* "ſon of *John Every* and *Mary* his wife, baptized *Decem*- "*ber* 5." And *John Carter*, one of the witneſſes, ſwore, that the pauper lived many years ago with him the ſaid *John Carter*; that *John Every*, who lived in *Pitminſter*, and died long ſince, was conſidered as the pauper's father; and that he knew *Mary Every*, who lives in *Pitminſter*, and whom he underſtood to be the pauper's mother, and has heard the pauper call her mother. On its being moved for a rule to ſhew cauſe why the order of ſeſſions ſhould not be quaſhed, lord *Mansfield* ſeemed to think, and ſo it was afterwards determined on ſhewing cauſe, that this evidence was ſufficient. *Bur. Set. Caſ.* 765.

1. *Settlement by birth of baſtards.*

Note; It is not in this place queſtioned, who ſhall or ſhall not be deemed a baſtard, but the ſettlement only is conſidered of ſuch as are firſt ſuppoſed to be baſtards: other matters relating to them, as concerning their filiation, and maintenance, and the like, are treated of under the title BASTARDS.

How far baſtards are to be ſettled where born.

A baſtard child is prima facie *ſettled where born:* And this was the ancient genuine ſettlement; and a perſon could have no other, until he had reſided for a certain time, as is aforeſaid.

But this rule admits of divers exceptions; which are as follows:

Baſtard born in a place by colluſion.

(1) If a woman comes into a place by privity and colluſion of the officers where ſhe belongs, and is there delivered of a baſtard; ſuch baſtard gains no ſettlement, notwithſtanding its birth. *Caſes of S.* 66.

And in the caſe of *Maſters* and *Child*, *H.* 10 *W.* It was ruled, that if a woman big with child of a baſtard, and ſettled in one pariſh, is perſuaded to go into another, and there be delivered; this fraud will make the pariſh chargeable where the mother was ſettled, though the child was not born there: But if a woman, with child of a baſtard, come accidentally into one pariſh, and is perſuaded by ſome of the pariſhioners to go into another pariſh, which ſhe doth, and there is delivered, this ſhall not charge that pariſh which perſuaded her. 3 *Salk.* 66.

(2) Alſo,

(2) Alſo, if a baſtard is born under an order of removal, and before the mother can be ſent to her place of ſettlement, being hindred by water or otherwiſe; ſuch baſtard ſhall not be ſettled where ſo born, but at the mother's ſettlement. *M.* 10 *An. Ickleford* and *Great Milton.* 1 *Seſſ. C.* 33. *Caſes of S.* 66. Baſtard born after the order of removal is made out.

(3) So alſo, If the officers are carrying a woman by virtue of an order of removal, and ſhe be delivered on the road *in tranſitu*; the baſtard ſhall go with the mother where ſhe is going, by virtue of the order, notwithſtanding the birth. *E.* 10 *An. Jane Gray*'s caſe. *Caſ. of S.* 66. Baſtard born in removing.

(4) Again, In the caſe of *Much-Waltham* and *Peram*, *M.* 8 *W.* A woman big with a baſtard child was removed by order of two juſtices of *Much-Waltham* to *Peram*. Before the next ſeſſions, ſhe was delivered at *Peram* of a baſtard child. At the ſeſſions, *Peram* appealed, and the juſtices adjudged the woman to be laſt ſettled at *Much-Waltham*, and ordered her to be ſent back thither. After which, an order was made, to ſettle the child at *Peram*; which it was moved to quaſh, becauſe though regularly baſtards muſt be maintained where born, yet in this caſe, where there ſeems to be a contrivance it ſhall not be ſo. The court ſeemed to agree to this, and a rule was made to ſhew cauſe, but none was ſhewed. 2 *Salk.* 474. Baſtard born after the removal, and before the appeal.

And further, In the caſe of *Weſtbury* and *Coſton*, *H.* 2 *An.* A woman big with child was removed by order of the juſtices from *Weſtbury* to *Coſton:* And, pending the order, before the next quarter ſeſſions, ſhe was delivered of a baſtard child. *Coſton* appealed, and thereupon the order of the two juſtices was reverſed; but the child was ſent back to *Coſton* as the place of his birth. But by the court; The birth at *Coſton*, did not ſettle the child there, becauſe it was under an illegal order procured by *Weſtbury*, which order being reverſed, the matter is no more than this, that they unjuſtly procured the woman to go thither. And *Holt* Ch. J. ſaid, Though here be no fraud in this caſe, yet here is a wrongful removal, and the reverſal makes all void *ab initio:* Fraud, or not fraud, is not material in this caſe; but the ſettlement of the child depends upon the removal, for if that was wrong, they ſhall not eaſe themſelves by it. 1 *Salk.* 121. 2 *Salk.* 532.

(5) So alſo, By the ſtatute of the 17 *G.* 2. *c.* 5. Where any woman, wandring and begging, ſhall be delivered of a child, in any pariſh or place, to which ſhe doth not belong, and thereby becometh chargeable to the ſame; the churchwardens or overſeers may detain her, till they can ſafely Baſtards born in a ſtate of vagrancy.

ſafely convey her to a juſtice of the peace. And if ſuch woman ſhall be detained and conveyed to a juſtice as aforeſaid, the child of which ſhe is delivered, if a baſtard, ſhall not be ſettled in the place where ſo born, nor be ſent thither by a vagrant paſs; but the ſettlement of ſuch woman ſhall be deemed the ſettlement of ſuch child. *ſ.* 25.

Baſtard born in priſon.

(6) A child born in the houſe of correction, ſhall be ſent to the place of its mother's ſettlement. 2 *Bulſtr.* 358.

And in the caſe of *Elſing* and the county gaol of *Hereford-ſhire*, *H.* 2 *G.* A baſtard was born in the county gaol: Reſolved, that the ſettlement was with the mother. 1 *Seſſ. C.* 94.

Baſtard born in a lying in hoſpital.

(7) A baſtard born in a lying-in hoſpital ſhall follow the mother's ſettlement. 13 *G.* 3. *c.* 82. [But as it may happen that the mother's ſettlement is not known, and there may be difficulties upon the pariſh where ſuch hoſpital is ſituate, in removals and appeals concerning ſuch ſettlement, it is enacted, that no ſuch hoſpital ſhall be eſtabliſhed without licence from the juſtices in ſeſſions.]

Baſtard born in an incorporated diſtrict.

(8) All baſtard children born in the houſe of induſtry of any hundred, or other diſtrict, incorporated by act of parliament for the relief and employment of the poor, ſhall be deemed to belong to the pariſh or place where the mother of ſuch baſtard child was legally ſettled. 20 *G.* 3. *c.* 36.

Baſtard born under a certificate.

(9) *T.* 5 *G. New Windſor* and *White Waltham.* The pariſh of *White Waltham* gave a certificate to a man and a woman ſuppoſed to be his wife, with which they went into the pariſh of *New Windſor*, and had there ſix children. Afterwards, the woman ſwearing they were never married, the queſtion was, whether (upon that ſuppoſition) the children, as baſtards, ſhould be ſettled in the pariſh where they were born, or in the pariſh which gave the certificate with their father and mother? And by the court, There is no doubt but the baſtard of a certificate perſon is ſettled in the place of his birth, for he is not ſuch an iſſue as will follow the ſettlement of his father or mother, neither is ſuch baſtard *his* or *her* child within the intention of the ſtatute, ſo as to be ſent back with the parent. *Str.* 186.

But in this caſe the point turned chiefly upon the certificate's being concluſive (for as the pariſh had given a certificate with the man and woman, as huſband and wife, the court held that they were not afterwards to be admitted to diſpute the validity of ſuch marriage, but adjudged

judged the children to be ſettled in the pariſh granting the certificate); Therefore in the caſe of *Helton* and *Lidlinch*, *T.* 15 *G.* 2. the matter came under debate again; which was thus: A ſingle woman went into the pariſh of *Lidlinch*, with a certificate from *Helton*; lived there a year, and then had a baſtard child. The ſole queſtion was, Whether the child ſhould be ſettled in the pariſh where born, or in the pariſh giving the certificate? By the court: The certificate muſt be taken to be good, and all fraud to be laid out of this caſe, it being a year that ſhe dwelt in the pariſh, before ſhe was delivered of the child; and wherever this court, in determining a ſettlement, adjudges upon the point of fraud, that fraud muſt be expreſsly ſtated; for as fraud is odious, it is never to be preſumed. The caſes hitherto adjudged as to this point, have either depended on point of fraud, or an illegal removal. So where the child is born in a gaol, he ſhall be ſettled in the pariſh where his mother is; for ſhe ſhall be conſtrued to be in cuſtody of the law, and in all other reſpects a pariſhioner. But the preſent caſe ſtands entirely on the 8 & 9 *W.* which for the encouragement of labour and induſtry, gave power of removing perſons by certificate, which certificate obliges the pariſh to whom given to receive and continue them in that pariſh, till they become actually chargeable, and then ſuch perſon is to be removed, together with his or her *family*, and in another place, with his or her *children*, to the place from whence the certificate was brought. The queſtion then is, Whether the baſtard is included under the words *family* or *children?* And we take it he is not: for the law takes no notice of baſtard children, they are *filii nullius*, *filii populi*, and are *prima facie* ſettled where born. *Nelſ.* Baſt. 2 *Seſſ. C.* 170. *Str.* 1168. *Burrow's Settl. Caſ.* 187.

T. 19 & 20 *G.* 2. *Wyke* and *Hipperholm cum Brighouſe*. Two juſtices made an order for the removal of *John Catton* otherwiſe *Speight*, being a baſtard, from *Wyke* to *Hipperholm* the place of his birth. Upon appeal, the ſeſſions quaſhed that order. The caſe was: *Sarah Catton*, mother of the pauper, came on the 25th of *March* by certificate from *Shelfe* to *Hipperholm*, being then pregnant with a baſtard child, namely, the ſaid *John Catton* otherwiſe *Speight* the pauper; and was afterwards, in *April* following, delivered of him at *Hipperholm*. The ſeſſions, being of opinion that the ſaid *John Catton* the pauper, by reaſon of the ſaid certificate, did not gain a ſettlement in *Hipperholm* where he was born a baſtard as aforeſaid,

aforesaid, discharged the orginal order. The certificate itself was returned by the *certiorari*, which undertook that *Shelfe* should provide for her *and her child*, whenever they should become chargeable. It was moved to quash this order of sessions, upon this objection, that the justices at the sessions had mistaken the law; in support whereof was cited the case of *Helton* and *Lidlinch*. On a rule to shew cause, the counsel on the other side insisted, that *Shelfe* was the last legal place of settlement of the pauper. And they argued that this case is clearly distinguishable from that of *Helton* and *Lidlinch*. For here the woman is stated to be then pregnant with a bastard child, and the certificate expressly undertakes to provide for her *and her child:* so that *Shelfe* plainly had this very child in contemplation, no other child being named or hinted at. Unto which it was answered, That by the express resolution in the case of *Lidlinch*, a bastard of a certificate woman is settled where born; and fraud shall never be presumed, where it is not stated. The question therefore is, Whether the unborn bastard is to be considered as certificated? 'Tis true, a certificate is conclusive against the parish who gives it: But that is only in such points as are included in the certificate. This certificate, undertaking to provide for her and her child, must mean a child in being. If she had no other child, they should have stated the matter specially. ——— Lord chief justice *Lee* and Mr. justice *Wright* agreed, that they must take the child referred to by the certificate to be a legitimate child then in being. And Mr. justice *Foster* observed (to which observation the other two justices agreed), that it did not at all appear, that the parish who gave the certificate *knew* that the woman was then with child. And he added, that there were many instances where women were near their time, without being known to be so. The counsel for *Hipperholm* proposed, that it should go back to the sessions to be more fully stated. But their oponents said, and the court agreed, that could not be done without consent. And the counsel for *Wyke* refusing to consent, the court were of opinion that the rule must be made absolute. And the order of sessions was quashed, and the original order affirmed, adjudging the settlement to be at *Hipperholm* where the pauper was born. *Bur. Settl. Cas.* 264.

M. 10 *G.* 3. *Ipsley* and *Studley*. *Anne Caufier* came into the parish of *Ipsley*, with a certificate from *Studley* in the words following: "To the churchwardens and over-"seers of the poor of the parish of *Ipsley*; We the church-"wardens

" wardens and overſeers of the poor of the pariſh of *Studley* " do hereby certify, own, and acknowledge *Anne Cauſier* " ſpinſter, and the child or children that ſhe now goeth " with, to be our inhabitants legally ſettled with us in " our ſaid pariſh of *Studley:* And if at any time hereafter " the ſaid *Anne Cauſier*, or her child or children which ſhe " now goeth with, ſhall become chargeable to and aſk re- " lief of your ſaid pariſh of *Ipſley*, we the ſaid churchwar- " dens and overſeers of the poor of our ſaid pariſh of " *Studley* do hereby promiſe for ourſelves and ſucceſſors, " that we will, when requeſted by any of you, receive, " relieve, and provide for them, as our inhabitants, ac- " cording as the law in that caſe requires." The child was born at *Ipſley*, within about a month after ſhe came to reſide there under the certificate. It was argued, that the certificate in this caſe could not operate as to the unborn child, but that the child was notwithſtanding ſettled in the place where it was born: That this is not a certificate within the act of 8 & 9 *W. c.* 30. The undertaking relates to a non-entity, an embrio. An unborn child cannot be perſonally certificated. It is no part of the parent's family. And the act obliges only the certifying pariſh to provide for the pauper mentioned in the certificate, together with *his or her family*; and a baſtard, in the ſenſe of the act, is part of no perſon's family. ——But the court were clearly of opinion, that the pariſh of *Studley* was bound by this certificate, which takes notice of the woman's being then unmarried and with child; and acknowledges the child ſhe then went with to be legally ſettled with them in their pariſh. And lord *Mansfield* obſerved, that the woman was very big with child; and was underſtood by both pariſhes to be ſo. And *Studley* expreſsly promiſed to provide for the infant ſhe then went with. Therefore they ought to be bound by their certificate. An infant *in ventre ſa mere* may be, to a variety of purpoſes, conſidered as born. *Bur. Settl. Caſ.* 650.

Baſtard not to be removed whilſt a nurſe child.

(10) Hitherto concerning the ſettlement of a baſtard child: But notwithſtanding the child's ſettlement, yet nevertheleſs if the mother and the child have different ſettlements, it ſeemeth that the baſtard child, even as all other children, ſhall go with the mother for nurture until the age of ſeven years, as a neceſſary appendage of the mother, and inſeparable from her. As in the caſe of *Skeffreth* and *Walford*, *M.* 3 *G.* 2. The order was, to remove a woman to her ſettlement; and her baſtard child, of two years of age, to another pariſh at a diſtance from the mother, being the place of its birth. It was objected, that the

child being a nurſe child, they cannot ſeparate it from the mother, by reaſon of the care neceſſary to nurture ſo very young a child; which none can be ſuppoſed ſo fit to adminiſter as the mother of it; and therefore it ſhould have been ſent with her to the place of her ſettlement. And it was quaſhed by the court for that reaſon. 2 *Seſſ. C.* 90.

But altho' the child may not be ſeparated from the mother, yet if ſhe voluntarily deſert it, it ſeemeth that the cauſe of nurture then ceaſeth, and that then it may be ſent to its place of ſettlement.

Whilſt the child continues with its mother as a nurſe child, and during that time not removeable to its place of ſettlement, yet the pariſh where the child's proper ſettlement is ſhall maintain ſuch child in that other pariſh. As in the caſe of *Darlington* and *Hemlington*, *H.* 17 *G.* 3. *Eleanor Guy* went with a certificate from the townſhip of *Hemlington* to the townſhip of *Darlington*, in which laſt townſhip ſhe had two baſtard children, and there became chargeable. An order being thereupon made for the removal of her to *Hemlington*, ſhe took the two children who were born in *Darlington* with her, being both under the age of ſeven years. Two juſtices made an order upon the townſhip of *Darlington* for the maintenance of the two children born in that townſhip. *Darlington* appealed againſt the order of maintenance, and the ſeſſions being of opinion that *Darlington* was not liable, quaſhed the ſaid order: But the proceedings being removed into the court of king's bench, the court were of opinion that *Darlington* was obliged to maintain the two children at *Hemlington*, whilſt reſiding there with their mother as nurſe children, and therefore quaſhed the order of ſeſſions, and affirmed the order of the two juſtices. *Douglas.* 9.

Evidence of baſtardy after the mother's death.

(11) *E.* 8 *G.* 2. *St. Peter's* and *Old Swinford.* Two juſtices remove *Joſeph* the ſon of *Joſeph Haighington* from *St. Peter's* to *Old Swinford*, as a baſtard born there on the body of *Hannah Aſke.* On appeal, the ſeſſions quaſh the order, and ſtate the caſe ſpecially: That *Joſeph Haighington*, the father, gave evidence in court, that for 7 years together, he travelled with the ſaid *Hannah Aſke* as wandering perſons from place to place, till the death of the ſaid *Hannah Aſke*, which was about 15 weeks ſince; and that during all that time they cohabited and lay together as man and wife; and it did not appear, that the marriage was ever queſtioned in the lifetime of the ſaid *Hannah:* That during the time that he and the ſaid *Hannah* did ſo cohabit as man and wife, ſhe was delivered of three children; that the

the ſaid *Joſeph*, one of them, who was the perſon removed by the ſaid order, was born in the ſaid pariſh of *Old Swinford*: That the ſaid *Joſeph* and the other two children were reputed as his children, and baptized as the legitimate children of him and the ſaid *Hannah*: That he and the ſaid *Hannah Aſke* were never married. And it appearing to the ſeſſions, upon the evidence of the ſaid *Joſeph Haighington*, that the ſaid *Joſeph* the infant was born during the time that the ſaid *Joſeph* and *Hannah* did cohabit and lie together and were reputed as huſband and wife, and there being no other evidence, they were of opinion that the evidence of the ſaid *Joſeph Haighington* could not ſupport the order, ſo as to baſtardize the ſaid *Joſeph* the infant removed. And in ſupport of the order of ſeſſions it was obſerved, that this man could not be a proper witneſs in the caſe; for no body can be adjudged a baſtard without the evidence of the woman. But by lord *Hardwicke* Ch. J. There is no ground to ſupport the order of ſeſſions. It is an apparent fact, that this man and this woman were never married. And what is there to make him an incompetent witneſs? It was an objection to an order of baſtardy two terms ago, *K.* v. *Willey*, that it was founded upon the evidence of a married woman, which ought not to be admitted to diſcharge her huſband. But this man doth not ſwear to diſcharge himſelf: For whether he be the legitimate, or only the natural father of the child, he is equally bound to maintain it. *Burrow's Settl. Caſ.* 25.

2. *Settlement by birth of legitimate children.*

How far legitimate children ſhall be ſettled where born.

In the caſe of *Rickmanſworth* and *St. Giles's*; A child was ordered to be removed from the pariſh of *Rickmanſworth* to the pariſh of *St. Giles's*, as being the place of his birth, the place of his father's laſt legal ſettlement being not known: For where the father's place of laſt legal ſettlement of a legitimate child is not known, there the child may be ſent to the place of its birth, as well as an illegitimate one. *Blackerby.* 246.

H. 8 *An. Cripplegate* and *St. Saviour's.* A child of three years of age was removed from one of theſe pariſhes to the other, and it appeared in the order, that they removed him there, becauſe he was born there, not having any other ſettlement. By the court; The father's ſettlement is the ſettlement of the children, when it can be found out; otherwiſe the birth of the child *prima facie* is the ſettlement of the child, until there is another ſettlement found out.

out. So a baſtard child's ſettlement is its birth, becauſe it is *filius nullius*; ſo if they cannot find out the ſettlement of a legal father, the birth is a ſettlement of the child. If a child be dropt in a pariſh, they may remove him to the place of his birth, or where his father's ſettlement was; and the ſettlement by birth is only *quouſque* they find the father's ſettlement; and if they never can find that, it is abſolute upon them. *Foley.* 265.

But here it is to be obſerved, that in the two caſes above mentioned, the point was not in queſtion, whether or no if the father had no ſettlement, yet if the *mother* had a ſettlement, ſuch children ſhould follow the mother's ſettlement, or ſhould be ſent to the place of their birth? And there will appear good opinions in the next courſe of ſettlements, that if the father hath no ſettlement as being a foreigner, or if the father's ſettlement is not known, yet if the mother hath a ſettlement, the children in ſuch caſe ſhall not be ſent to the place of their birth, but to the place of their mother's ſettlement: But the rule intended to be drawn from theſe caſes, which is ſufficient for this place, and which the caſes will well bear, is no more than this, that the place of the birth of a legitimate child is the ſettlement of it, until another ſettlement be found out.

By the 13 *G.* 2. *c.* 29. for confirming and inlarging the powers given by charter to the governors and guardians of the hoſpital for the maintenance and education of expoſed and deſerted young children, it is provided, that no child, nurſe, or ſervant, received or employed in ſuch hoſpital, ſhall by virtue thereof gain any ſettlement in the pariſh where ſuch hoſpital ſhall be ſituate; and conſequently the ſettlement of *foundlings* is not different from that of all other perſons: that is, if they are legitimate children, they ſhall follow their father's ſettlement, if known; if not, then their mother's ſettlement; if neither of theſe is known, or if they are baſtards, they ſhall be ſettled where they were born; if that cannot be known, which is properly the caſe of a *foundling*, this ſeemeth to fall under the general rule, that every perſon ſhall be maintained and povided for in the place where he happens to be, until a ſettlement can be found; for in a chriſtian civilized country, no perſon ought to be ſuffered to periſh merely for want of neceſſaries. Only, in the preſent caſe, the act takes ſuch children off the pariſh, and leaves them to the proviſion of the hoſpital.

iv. Of

iv. Of the ſettlement of children with their parents.

Settlement of a legitimate child with the parents.

1. The birth of legitimate children doth not give them a ſettlement, except where the ſettlement of their father and mother is not known, and then only till it is known. *Foley.* 269.

At what age a child may gain a ſettlement diſtinct from the parents.

2. Formerly it was held, that a child ſhall continue with its parents as a nurſe child, until it ſhall be 8 years of age, during which time it ſhall not be deemed capable of gaining a ſettlement in its own right; but by the latter reſolutions it ſeems to be agreed, that a legitimate child ſhall neceſſarily follow the ſettlement of its parents as a nurſe child or as part of the family, only until it ſhall be 7 years of age; and that after that age it ſhall not be removed as part of the father's family, but with an adjudication of the place of its own laſt legal ſettlement, as being deemed capable at that age of having gained a ſettlement of its own. But it ſeemeth not difficult to determine with exact certainty, at what age a child may have acquired a ſettlement of its own, diſtinct from the parents ſettlement. For by the 5 *El. c.* 5. *ſ.* 12, a child of ſeven years of age may be bound apprentice to a ſhipwright, fiſherman, owner of a ſhip, or other perſon uſing the trade of the ſeas; and by the vagrant act of the 17 *G.* 2, a vagrant's child of that age may by the juſtices be put out an apprentice: And as ſoon as he ſhall have reſided and lodged in a pariſh for 40 days under the indenture, he will have thereby gained a ſettlement. So that the preciſe time, when a perſon may have gained a ſettlement in his own right, is at the age of ſeven years and 40 days.

How far children ſhall follow the father's ſettlement.

3 *E.* 10 *An.* 2. and *St. Giles*'s. Order to remove an infant to the pariſh of *St. Giles*'s; becauſe it appeared, that though the father was ſettled at another place, yet the child was born at *St. Giles*'s. Quaſhed by the court; for that the place of the ſettlement of the child is with the father, and not the place where the child was born. 1 *Seſſ. C.* 18.

H. 10 *G. St. Giles*'s *Reading* and *Everſly Blackwater*. It was ruled by all the court upon argument, that where a father gains a ſecond ſettlement after the birth of his child, that ſettlement is immediately communicated to the child. And a child may be ſent to the place of his father's ſettlement, without ever having been there before. 2 *Seſſ. C.* 112. *Str.* 580. L. *Raym.* 1332.

M. 12 *G.* 2. *Sowton* and *Sydbury*. The queſtion was, whether the children, being above the age of nurture,

ſhall be removed with the father to the father's ſettlement, where the child had never inhabited? By *Lee* Ch. J. In the caſe of *Everſly Blackwater*, the court were of opinion, that a child might be ſent to the ſettlement of his father, though it had never been there before, contrary to an opinion of L. *Parker* in a former caſe. And he ſaid the true diſtinction, I think, is, that where children have gained no ſettlement, but continue part of their father's family, they ſhall follow their father's ſettlement. 2 *Seſſ. C.* 150. *Andr.* 345.

T. 2 *An. Comner* and *Milton*. A man ſettled at *Comner*, and having ſeveral children born in that pariſh, afterwards removed to *Milton* with his children, and gained a ſettlement there; and becoming very poor, his children born in *Comner*, were by an order of two juſtices ſent to *Comner*, *viz.* thoſe that were under ſeven years old; the juſtices apprehending, that the place of their birth was the place of their lawful ſettlement. And this order being removed into the king's bench by certiorari, it was inſiſted to maintain the order, that the children had gained a ſettlement in *Comner* by birth, which was not altered or defeated by any ſubſequent act of their father in gaining a ſettlement at *Milton*; for his children were with him there only as nurſe children, and his ſettlement ſhall not be the ſettlement of the children. But by *Holt* Ch. J. The place where a baſtard is born, is the place of his ſettlement, unleſs there is ſome trick to charge the pariſh; but the place where legitimate children are born, is not the place of their ſettlement, for let that be where it will, the children are ſettled where their parents are ſettled; as for inſtance, if the father is ſettled in the pariſh of *H.* but goes to work in the pariſh of *B.* and before he gains any ſettlement there, has a ſon born in the pariſh of *B.* and then dies; this child may be ſent to the pariſh of *H.* for it is not the birth, but the ſettlement of the father, that makes the ſettlement of his child; and if the father hath gained a new ſettlement for himſelf, he hath likewiſe gained a new ſettlement for his children, who do not go with him to his new ſettlement as nurſe children, but as part of his family. 2 *Salk.* 528. 3 *Salk.* 259.

Child emancipated from the father.

4. *T.* 7 *G. Eaſtwoodhay* and *Weſtwoodhay*. Upon appeal from an order of two juſtices, for the removal of *Robert Baker*, from the pariſh of *Weſtwoodhay* to the pariſh of *Eaſtwoodhay*, the ſeſſions ſtate the fact ſpecially for the opinion of the court: That forty years ſince, *Thomas Baker*, the father of this *Robert*, was ſeiſed in fee of a freehold

freehold eſtate in the pariſh of *Hampſtead Marſhal*, where he lived till the year 1697, and had this ſon *Robert*, who was at that time eight years old: That in 1697, *Thomas* the father and all his family removed to *Chevely*, where he rented a tenement of 20l a year, for two years: That in 1699, he purchaſed a copyhold eſtate of 11l a year in the pariſh of *Weſtwoodhay*, whither he removed with his ſon and ſervants, and ſerved churchwarden and other pariſh offices, and paid taxes, and ſtaid there till the year 1716: That in 1716, he purchaſed a cottage of 11l 12s 6d a year in *Eaſtwoodhay*, and went and lived upon it till his death: but *Robert* the ſon ſtaid behind in *Weſtwoodhay*, where he married a wife, and has worked ever ſince on his own account, and that he is 30 years old. Upon the whole; the ſeſſions confirmed the order of the two juſtices for his ſettlement at *Eaſtwoodhay*. It was moved to quaſh the order of ſeſſions, for that the ſettlement of *Robert* the ſon is either at *Hamſtead Marſhal*, where he was born, and where he lived till eight years old; or if it ſhould be carried ſo far, as that he gained a new ſettlement with the father, by removing with him as part of his family, according to the caſe of *Comner* and *Milton*, yet that can carry him no farther than *Weſtwoodhay*, which is the laſt place to which he accompanied his father; but let the ſettlement be in either, it is not material now; the only queſtion being, whether here is any ſettlement in *Eaſtwoodhay*, for which there is no colour. On the other hand, it was inſiſted, that let the ſon be of what age he will, he ſhall follow the ſettlement of the father, till he gains one by his own acquiſition; and it appearing he had never done any thing to gain a ſettlement by act of his own, either in *Hamſtead Marſhal*, *Chevely*, or *Weſtwoodhay*, then he muſt follow the ſettlement of the father as well in *Eaſtwoodhay* as in any of the reſt. *Pratt* Ch. J. The queſtion is not, where this man and his family are ſettled, but whether there appears a ſettlement of him in *Eaſtwoodhay?* If he had gone thither with his father, as part of the family; poſſibly it might have been a ſettlement of him there: but by ſtaying behind, he was divided from his father, and therefore there is no colour to make it a ſettlement in *Eaſtwoodhay*. I think his ſettlement is in *Weſtwoodhay*, which was the laſt place where he lived as part of his father's family. To which the reſt of the court agreed: And the order was quaſhed. *Str.* 438.

E. 2 *G.* 2. *St. Michael's Coſlany* in *Norwich*, and *St. Matthew's* in *Ipſwich*. Two juſtices made an order, to

remove *Edmund Williams*, *Anne* his wife, and *Edmund*, *Solomon*, and *Amy*, children of the ſaid *Edmund* the father, from the pariſh of *St. Michael* in *Norwich*, to the pariſh of *St. Matthew* in *Ipſwich*. Upon an appeal from this order, the ſeſſions ſtated the matter ſpecially, *viz.* That *Edmund Williams* the grandfather was ſettled at *Shipton Mallet* in *Somerſetſhire*; and afterwards removed to *Bruton* in the ſaid county, and had a writing given him from *Shipton Mallet*, acknowledging his legal ſettlement to be there; by virtue of which he continued at *Bruton* for 20 years, where *Edmund* the ſon was born; and that he continued there with his father till he was nineteen years of age, and was bred up to his father's buſineſs of a woolcomber. Then *Edmund* the ſon left his father, and came to *Norwich*, and there he married two wives; by the firſt he had *Edmund* the grandſon; and ten years after his wife died. Then he married *Anne* his now wife; by whom he had *Solomon* and *Amy* two other children; ſince whoſe birth, about two years ago, *Edmund Williams* the grandfather gained a new ſettlement at *St. Matthew's*, *Ipſwich*: But *Edmund* the ſon hath never lived with his father at *Ipſwich*, or any where elſe, ſince he lived with him at *Bruton*. The queſtion was, whether the perſons removed, to wit, *Edmund* the ſecond, his wife, and three children, ſhould follow the ſettlement of the grandfather at *Ipſwich*; or whether they ſhould not be looked upon as ſeparated from the grandfather's family, eſpecially after ſo long an interval of time? Mr. J. *Reynolds*; I do not ſee how the father can gain a ſettlement for the ſon, ſo many years after the ſon has left him. Lord Ch. J. *Raymond*; I think it is odd, that an old man of ſixty, who has left his father for 40 years, ſhall follow the ſettlement of his father, as oft as his father removes. In the caſe of young children it is otherwiſe; for they cannot be ſevered from their parents, becauſe of nurture. And by the whole court: The reaſon why we enquire into the ages of children is, becauſe if they are grown up, and above ſeven years old, they may gain a ſettlement by their own act; but it is almoſt a contradiction in terms to ſay, that a man who has left his father 40 years, ſhall follow the ſettlement of his father. 2 *Seſſ. C.* 129. *Str.* 831.

H. 21 *G.* 2. *Bugden* and *Ampthill*. *John Green*, father of *Thomas Green* the pauper, came by certificate from *Royſton* to *Ampthill*. They remained together at *Ampthill* under the certificate, till *Thomas* the pauper came of age. Then *Thomas* the pauper, being upwards of 21 years of age, married in *Ampthill*, and left his father, and lived there

there with his wife and children distinct from his father, till removed by the present order. Three years after the marriage of *Thomas*, *John* the father removed from *Amptbill* to *Bugden*, and there gained a settlement: But *Thomas* the pauper never lived there. It was argued, that here was a good settlement of the pauper at *Bugden*, for that the last settlement of the father would be the legal settlement of the son, unless the son had gained a new settlement of his own. On the other hand, it was insisted, that as the son did not live with his father at *Bugden*, he could not gain any settlement there, being no part of his family; and the rather, because he had an independent and distinct family of his own at another place. And of that opinion was the court; who held, that the pauper ceased to be part of his father's family, upon his marrying and living separate and distinct from his father. *Burrow's Settlm. Cas.* 270.

E. 9 *G.* 3. *Walpole St. Peter's* and *Wisbech St. Peter's.* The pauper, being settled at *Outwell* as part of his father's family, listed himself for a soldier, and continued in the service four years. After his discharge, he came home to his father, who had removed from *Outwell*, and then lived at *Walpole*, and rented and occupied a farm there of about 50 l a year, and continued with his father there about 12 or 14 weeks; and afterwards worked at different places as a labourer, till he was removed by order of two justices from *Wisbech* to *Walpole* aforesaid. The sessions, upon appeal, confirm the order. It was moved to quash both these orders, for that the pauper's legal settlement was at *Outwell*; which was the place of his father's settlement at the time of the pauper's leaving his father's family, and consequently the pauper's own derivative settlement. The son, by listing himself for a soldier, and continuing four years in the service, became emancipated from his father's family; and not having gained any subsequent settlement for himself, must resort to his old derivative settlement at *Outwell*; and could not, after such an emancipation from his father's family, gain a settlement at *Walpole St. Peter's*, where his father had newly and subsequently gained a settlement, but had none there when the son left him and ceased to be part of his family. And a rule was made to shew cause. Which rule, upon affidavit of service, was made absolute, without defence. And both the orders were quashed. *Bur. Settl. Cas.* 638. *Black. Rep.* 669.

H. 15 *G.* 3. *Halifax* and *Warley.* Case specially stated. *John Bragg*, the father of the pauper, went with a certificate from *Skircoat* to *Halifax*, where the pauper was born.

And when he (the pauper) was about fifteen years of age, he bound himſelf an apprentice by indenture to *William Smith* of *Halifax* ſtuff weaver, for the term of four years, and ſerved his maſter there for that time. After he was out of his apprenticeſhip, and when he was about 19 years of age, his father took a farm of 12l a year in *Warley*, and went and reſided there ſeveral years: That his ſon the pauper, always after the father went to *Warley*, worked about the country as a ſtuff weaver, but came to his father at *Warley* when he pleaſed, and kept his holiday cloaths there, and conſidered his father's houſe as his own home: That when he came to his father's houſe, he paid for what he had, and was his own maſter, to go and work for himſelf whenever he pleaſed. Lord *Mansfield* was not in court. The other three judges thought that the ſon could not be conſidered as emancipated, or independent of or ſeparated from his father. He went to his houſe when he pleaſed, and had his cloaths there. Mr. Juſtice *Aſton* ſaid, that where a ſon is become independent of his father's family, or emancipated from it, he would not acquire a ſettlement where his father goes to reſide: But if he remains part of his father's family, he will acquire a derivative ſettlement where his father goes and ſettles. The diſtinction was well laid down, he ſaid, in the *Bugden* caſe; and he obſerved, that in the caſe of *Walpole St. Peter*'s, the ſon had been four years a ſoldier, and was emancipated from his father's family, and had ceaſed to be part of it. *Bur. Set. Caſ.* 806.

Father dead.

5. *H.* 10 *G. St. Giles*'s and *Everſly Blackwater*. Tho' the place of the birth of a child, where the father hath no ſettlement, is the place of the ſettlement of the child; yet where the father hath gained a ſettlement, his children, though born in another pariſh, ſhall be looked on as ſettled at the place of their father's laſt legal ſettlement, and ſhall be removed thither, as well after the death of their father, if occaſion requires, as in his lifetime, ſuppoſing they have gained no ſettlement of their own. L. *Raym.* 1332. *Str.* 580.

T. 8 *W. K.* and *Luckington*. *Howel* and his wife were ſettled at *Luckington*, and came to *St. Auſtin*'s, and there a child was born. The father dies in the king's ſervice. The queſtion was, who ſhall keep the child? It was objected, that it was ſettled where born; for that they could not ſend it to the father, when he was dead. But by *Holt* Ch. J. The death of the father doth not alter the child's ſettlement. *Comb.* 380.

So if the father dies before the child is born; yet the child ſhall be ſettled where the father was ſettled before his death. *M.* 5 *An.* 2. and *Cliſton*. 19 Viner 382.

6. *M.* 1 *G. St. George*'s and *St. Katharine*'s. A man settled in *St. Katharine*'s, married, and had ſix children born there, and died. After his death, the widow goes into the pariſh of *St. George*, with her ſix children, and rents a houſe of 12l a year, and lives in it with her children four months. The ſingle queſtion was, Whether the children ſhould be ſettled where their father was laſt ſettled, or have a ſettlement with the mother in the pariſh of *St. George?* And the whole court were of opinion, that the ſix children were ſettled in the pariſh of *St. George*, where the mother's laſt ſettlement was. And by *Parker* Chief Juſtice, There is no diſtinction between the ſettlement of children with the father or mother; for they are as much her's as the father's, and nature obliges her, as much as the father to provide for them; ſo does the law; and every argument that holds for their ſettlement with the father, holds as to their ſettlement with the mother. The reaſon why children ſhall not gain a ſettlement, where the widow gains a ſettlement only by intermarriage, is, becauſe it is then not her family, but her huſband's; and ſhe cannot give the children any ſuſtenance without the huſband's leave. But in this caſe, ſince ſhe is equally puniſhable with her huſband for deſerting her children, and therefore could not leave them behind her, they muſt gain a ſettlement with her. *Foley.* 254. 1 *Seſſ. C.* 69. Father dead and the mother a widow.

H. 13 *G. Woodend* and *Paulſpury*. *John Buncher* was ſettled at *Woodend*, and died, leaving a widow and one daughter aged 14 years. The widow removed to *Paulſpury*, into a meſſuage and tenement of her own for life, and took her daughter with her, and the daughter lived with her there two years. And the queſtion was, Whether the daughter gained a ſettlement at *Paulſpury?* And it was adjudged that ſhe did; becauſe the mother being a widow, having gained a new ſettlement after her huſband's death, the daughter gained a ſettlement alſo as part of her family. And there is no difference between a father's gaining a ſettlement, and a mother's, in ſuch caſe as this; for the mother is obliged to provide for her children after her huſband's death, as the father was when living; and ſhe could not leave this daughter behind her, neither could ſhe be removed from her. L. *Raym.* 1473. *Fol.* 256. *Str.* 746.

T. 8 & 9 *G.* 2. *Barton Turfe* and *Happiſburgh*. *Thomas Man* hired a farm of the yearly value of 100l in *Barton Turfe*, which he occupied for about three years, and died there. After his death his widow removed from *Barton*

Turfe to *Happiſburgh*, and dwelt in a houſe and occupied lands there, of the yearly value of 4 l, which were given to her by the will of her father. And *Deborah* her daughter, being then of the age of 13 years, went and lived with her mother as part of her family, for about a year and a half. By the court: The daughter gained a new ſettlement in *Happiſburgh*, by living with her mother there, as part of her family, upon the mother's own eſtate. For a child may gain a ſettlement under its mother after the father's death, equally as under its father whilſt alive. The mother's ſettlement has the ſame effect upon the child as the father's had. *Burrow's Settl. Caſes.* 49.

And the like was held by the court in the caſe of *Oulton* and *Wells*, *M.* 9 *G.* 2. *Id.* 64.

Father dead and the mother married again.

7. *M.* 10 *W.* *Wangford* and *Brandon.* Three poor men of *Wangford* came into the pariſh of *Brandon*, and there married three poor widows of *Brandon*, who received relief from the ſaid pariſh; each of which widows had children by their former huſbands, ſome under 7, ſome above 7 years of age. It was holden, that the children did not gain a ſettlement in *Wangford*, nor were removeable thither, to charge that pariſh. As to the nurſe children, they indeed might be ſent thither for nurture only: Yet ſtill the pariſh of *Brandon* muſt relieve them there, and not the pariſh of *Wangford*. But the children above the age of 7 years ought not to be removed at all; being ſettled inhabitants in the pariſh of *Brandon*. And the removal of the mother ſhall have no influence on the ſettlement of their children. *Carth.* 449. 2 *Salk.* 482. *Burrow's Settlem. Caſ.* 3.

In the aforeſaid caſe of *Comner* and *Milton*, *T.* 2 *An.* It was ſaid, that if after death of the father, the mother marries again, to a huſband who is ſettled in another pariſh; her children, ſuch of them as are above 7 years old, ſhall not be removed; thoſe under ſhall be removed, but that only for nurture, for they ſhall be kept at the charge of the other pariſh, where their father whilſt living was ſettled; and to that pariſh they may be ſent after 7 years old, as to the place of their lawful ſettlement; for this accidental ſettlement of their mother, which was only by the marriage with a ſecond huſband, and as ſhe is now become one perſon with him, ſhall not gain a ſettlement for her children.

And in the caſe of *Woodend* and *Paulſpury* aforeſaid, *H.* 13 *G.* It was ſaid, that if after the huſband's death the wife ſhall marry again, to a man ſettled in another pariſh; her children by her former huſband muſt go with her for nurture,

nurture, yet they are no part of her ſecond huſband's family, and therefore gain no ſettlement thereby in the pariſh where the father in law is ſettled. L. *Raym.* 1473.

T. 6 & 7 *G.* 2. *St. Giles's in the Fields* and *St. Clement's*, *Jacob Maile*, the pauper, was an infant of 9 years of age. His father's ſettlement was not known: His mother's ſettlement before their marriage was known: His father died: His mother married a ſecond huſband, who had a ſettlement; and ſhe, conſequently, gained a new ſettlement by this ſecond marriage. By the court: *Jacob Maile*'s ſettlement is where his mother was laſt ſettled before her marriage with *Jacob*'s father; the new gained ſettlement of his mother not being gained in her own right, but only in right of her ſecond huſband. And in this caſe the court agreed, that where children are ſent with their mother for nurture, they are to be ſupported at the expence of the pariſh where their legal ſettlement is. *Burrow's Settl. Caſes.* 2.

Father run away, whether the child can gain a ſettlement with the mother.

8. *E.* 8 *G.* 2. *K.* and *St. Mary Berkhamſtead.* The father ran away, and the mother went and reſided on an eſtate deviſed to her: One queſtion was, whether the children could gain a ſettlement, by reſiding with the mother on ſuch eſtate, where the father had never lived? And it was held by Lord *Hardwicke* Ch. J. That as it did not appear that the father was dead, the court muſt ſuppoſe him to be living; and in ſuch caſe, the children could gain no ſettlement but what was derived from their father: But the matter was afterwards referred to the judges of aſſize. 2 *Seſſ. C.* 182.

Father having no ſettlement, whether the child ſhall be ſettled with the mother.

9 *H.* 12 *G.* *Weſtram* and *Chidingſtone.* An *Engliſhman*, whoſe ſettlement was not known, married, had a child, and ran away: The child was then nine years of age. By the court, the mother and children ought to be ſettled, where the mother was ſettled before marriage. *Foley.* 252.

M. 3 *G.* 2. *St. Giles*'s and *St. Margaret*'s. *Sarah Etherington*, with *Dorothy* her daughter aged five years, was removed from *St. Margaret*'s to *St. Giles*'s, as being the place of *Sarah*'s laſt legal ſettlement before her marriage, ſhe having married an *Iriſhman* who had no ſettlement: And it was adjudged, that *Dorothy* her daughter ſhall be ſettled with her mother in the pariſh of *St. Giles*'s, where her ſaid mother's ſettlement was before marriage. *Fol.* 251.

T. 9 *G.* *K.* and *St. Paul's*, *Shadwell.* Reſolved by *Eyre* and *Forteſcue*, that where the father being a foreigner had no ſettlement, the children ſhould have the benefit of their mother's ſettlement; for that her right ſhould deſcend to them,

them, and they ſhould not be ſent to the place of their birth. 2 *Seſſ. C.* 113.

H. 10 *G. St. Giles*'s and *Everſly Blackwater*. It was held by the court, that where the father's ſettlement cannot be found, yet if the mother's can, the child ſhall have the benefit of that. 2 *Seſſ. C.* 112.

H. 28 *G.* 2. *St. Botolph's without Biſhopſgate*, and *St. John's Wapping*. A child of an *Iriſhman* having no ſettlement in *England*, and ſuppoſed to be on board a man of war in the *Weſt Indies*, and of his wife being an *Engliſh-woman*, was adjudged to go with the mother to the mother's ſettlement which ſhe had before marriage. *Burrow's Sett. Caſ.* 367.

M. 33 *G.* 2. *St. Matthew's Bethnal Green*, and *St. Katherine's*. A man, whoſe ſettlement was not known, married a woman who was ſettled in the precinct of *St. Katherine*. They had a ſon born in *Bethnal Green*. Which ſon married a woman ſettled in the pariſh of *St. Leonard Shoreditch*; and had ſeveral children by her. It was argued that theſe children ought to follow the acquired ſettlement of their mother; and not their father's, which was only a derivative one from their grandmother, who had married a *Frenchman* that had no ſettlement. But not allowed by the court; who ſaid, that there is no difference between an acquired and a derivative ſettlement. And the rule laid down was this; That the child's ſettlement follows that of its father, if the father's can be found; and that no recourſe ſhall be had to the mother's ſettlement, till that of the father can be traced no further. And theſe children were adjudged to be ſettled at *St. Katherine*'s. *Burrow's Sett. Caſ.* 482.

Father and mother, both dead, and the child's ſettlement not known.

10. A travelling woman, having a ſmall ſucking child upon her, was apprehended for felony, and ſent to the gaol, and was hanged: This child is to be ſent to the place of its birth, if it can be known; otherwiſe it muſt be ſent to the town where the mother was apprehended, becauſe that town ought not to have ſent the child to gaol, being no malefactor. *Read.* Poor. *Dalt.* 168.

And where a child is firſt known to be, that pariſh muſt provide for it, till they find another: By *Holt* Ch. J. *Comb.* 364. 372.

v. Of ſettlement by apprenticeſhip.

The ſtatutes relating to the ſettlement of apprentices, are theſe following; which I will firſt exhibit together at one

one view, and then ſet forth the judgment of the court of king's bench upon the ſeveral parts thereof.

Statutes concerning the ſettlement of apprentices.

By the 13 & 14 *C.* 2. *c.* 12. *On complaint by the churchwardens or overſeers of the poor, within* 40 *days after any perſon ſhall come to ſettle in any pariſh, on any tenement under* 10*l a year*; *two juſtices* (1 Q.) *may remove him to the place where he was laſt legally ſettled, either as a native, houſholder, ſojourner, apprentice, or ſervant, for the ſpace of* 40 *days at the leaſt.* By the 1 *J.* 2. *c.* 17. *The ſaid* 40 *days ſhall be reckoned, not from the time of his coming to inhabit, but from the time of his delivering notice in writing.* And by the 3 *W.* *c.* 11. *Not from the time of delivering ſuch notice, but from the time of the publication of ſuch notice in the church.*

But by the ſaid act of the 3 *W.* *If any perſon ſhall be bound an apprentice by indenture, and inhabit in any town or pariſh, ſuch binding and inhabitation ſhall be adjudged a good ſettlement, though no ſuch notice in writing be delivered and publiſhed.* ſ. 8.

By the 12 *An. ſt.* 1. *c.* 18. *If any perſon, after* June 24, 1713, *ſhall be an apprentice bound by indenture to any perſon reſiding under a certificate, in any pariſh, townſhip, or place; and not afterwards having gained a legal ſettlement in ſuch pariſh, townſhip, or place; ſuch apprentice, by virtue of ſuch apprenticeſhip, indenture, or binding, ſhall not gain any ſettlement in ſuch pariſh, townſhip, or place; but every ſuch apprentice ſhall have his ſettlement in ſuch pariſh, townſhip, or place, as if he had not been bound apprentice.* ſ. 2.

And by the 9 & 10 *W.* *c.* 11. *No perſon who ſhall come into any pariſh by a certificate, ſhall be adjudged by any act whatſoever to gain a ſettlement in ſuch pariſh, unleſs he ſhall* bona fide *take a tenement of* 10*l a year, or execute an annual office in ſuch pariſh.* (And conſequently not by apprenticeſhip.)

And by the 8 *An.* *c.* 9. and 9 *An.* *c.* 21. *The maſter ſhall pay duty of* 6*d a pound, for* 50*l or under, and of* 12*d a pound for every pound above, of money, or of things not money according to their value, given with apprentices, and proportionably for greater or leſſer ſums: Except money given with pariſh apprentices, or out of public charities. The ſum given, to be written in the indenture in words at length. And beſides the ſtamps before requiſite, the indentures to be moreover ſtamped with another ſtamp, denoting the* 6*d or* 12*d a pound reſpectively. And if the ſums are not truly inſerted, or duties not paid or tendered, or indentures not ſtamped or tendered to be ſtamped within the time limited: Such indentures ſhall be void, and not available in any court or place, or to any purpoſe whatſoever.*

And

And by the 31 *G.* 2. *c.* 11. *No perſon who ſhall have been bound an apprentice, by any deed, writing, or contract, not indented, being firſt legally ſtamped, ſhall be liable to be removed from the place where he was ſo bound and reſident* 40 *days, by any order of removal, or order of ſeſſions, by reaſon only of ſuch writing not being indented.*

General expoſition of the ſtatutes.

1. The ſtatute of the 13 & 14 *C.* 2. gives power to remove perſons within the ſpace of 40 days after they come to reſide, but no power to remove them after the ſaid 40 days; and conſequently where the overſeers have neglected to remove them for 40 days, they become afterwards *unremoveable*. The ſtatutes of *J.* 2. and *W.* 3. do reſtrain ſuch 40 days reſidence to be after notice in writing; but the latter clauſe of the ſtatute of *W.* takes off that reſtriction with regard to apprentices; and the reaſon thereof is, becauſe ſuch notice would be to no purpoſe, for that the juſtices cannot upon the complaint of the overſeers remove the apprentice from his maſter, that is to ſay, they cannot upon complaint of the overſeers make void the indenture between the maſter and his apprentice, by which the apprentice is bound to live with his maſter, and the maſter is bound to keep him; for this can only be done upon the complaint of the maſter or apprentice: And continuing 40 days unremoveable without notice, is the ſame thing as continuing 40 days removeable, but not removed, after notice; and conſequently the party hath gained a ſettlement. And it is poſſible that the apprentice may gain as many ſettlements as there are ſpaces of 40 days in the term of his apprenticeſhip; and where he ſerves the laſt 40 days, there is his laſt ſettlement: Conſequently, he may gain a ſettlement long before his maſter ſhall gain one; as where his maſter's ſettlement ſhall ariſe from executing an annual office: Or, he may gain a ſettlement, whilſt his maſter ſhall gain none, as when he reſides upon a tenement under 10*l* a year: And of conſequence, the maſter may be removed, when the apprentice cannot be removed; and in ſuch caſe the maſter ſhall be neceſſitated to apply to the juſtices, to compel the apprentice to go along with him.

Binding to be in writing.

2. *E.* 21 *G.* 2. *Stratton* and *Llewannick*. Two juſtices make an order to remove *Stephen Pethick* from *Llewannick* to *Stratton*. And upon appeal, the ſeſſions confirm that order. The caſe was; *Stephen Pethick* the pauper, at his age of 14 years, was by his mother (being then a widow) placed as an apprentice with his brother in law *John Petherick*, by trade a cordwainer, in the pariſh of *Stratton*, for ſix years, to learn the ſaid trade: But at the time

of

of placing him as aforeſaid, no indenture of apprenticeſhip was executed. His mother agreed to pay to his maſter 4l in hand, and 4l at the end of three years, and his maſter was to find him meat, drink, waſhing, and lodging during the ſaid ſix years, and his mother was to find him cloaths during the ſaid term. All which was performed accordingly. And the ſaid *Stephen Pethick* believes, that in or about the laſt year of the ſaid term, one part of an indenture was prepared, in order to bind him an apprentice to the ſaid *John Petherick*, purſuant to the ſaid contract or agreement: But he doth not remember that he executed the ſaid part, or that it was executed by his mother and the ſaid *John Petherick*, or either of them, nor what is become of the ſaid one part.——It was moved to quaſh theſe orders, for that all this doth not amount to ſuch a binding as will gain a ſettlement, there being no indenture duly executed. The court ſeemed to think this exception too ſtrong to be anſwered; and made a rule to ſhew cauſe why the orders ſhould not be quaſhed: Which rule was afterwards made abſolute, without defence. *Burrow's Settl. Caſ.* 272.

H. 22 *G.* 2. *Mawnan* and *Falmouth*. It was moved to quaſh an order of two juſtices, and an order of ſeſſions confirming the ſame, for removing *Jane Luckey* from *Falmouth* to *Mawnan*, upon the foundation of her having ſerved an apprenticeſhip there. The objection was, that it was only by a parol binding; whereas the act requires that it be by indenture. On a rule to ſhew cauſe, the counſel on the other ſide acknowledged that it could not be ſupported. *Bur. Settl. Caſ.* 290.

3. By the ſeveral ſtamp acts, the indenture is to be written on parchment or paper ſtamped with a 5s ſtamp; except indentures of pariſh apprentices, which are to be on a ſixpenny ſtamp. And there are to be additional ſtamps (as aforeſaid) in proportion to the value of money or other things given with the apprentice; except money given with pariſh apprentices or out of publick charities. To be ſtamped.

T. 17 & 18 *G.* 2. *Llanvair Dyffryn Clwyd* and *Llanlidan*. *John Edwards*, an infant, was by his father bound apprentice by indenture, but the indenture was not ſtamped. And it was ruled, that the indenture not being on ſtamped parchment or paper could not be given in evidence at all, being abſolutely void to all intents and purpoſes. *Burrow's Settl. Caſ.* 236.

M. 16 *G.* 2. *Holbeck* and *Gilderſon*. *Peter Orange* the pauper was bound a pariſh apprentice by indenture; but the indenture being produced, it appeared not to be ſtamped.

It was objected, that by the 5 *W.* *c.* 21. which lays a duty of 6 d upon the indenture of a pariſh apprentice, it is enacted, that ſuch indenture ſhall not be given in evidence, nor be available in any court, till the duty and alſo a penalty of 5 l be paid, and the parchment or paper ſtamped. And by the court, This indenture was neceſſary evidence to make out the proof of a binding by indenture, for that binding could be no otherwiſe proved but by the indenture; and the indenture being not ſtamped could not be admitted as evidence, and the juſtices ought to have paid no regard to it. *Burrow's Settl. Caſ.* 198.

H. 4 *G.* 2. *Cuerden* and *Leyland.* On a ſpecial order of ſeſſions it was ſtated, that the pauper was bound apprentice by indenture, and the maſter had 20 s paid him; that he ſerved three years; but that the maſter never paid the duty of 6 d in the pound according to the 8 *An.* *c.* 9. *ſ.* 39. which ſays, that if the duty be not paid, the indenture ſhall be void to all intents and purpoſes whatſoever. The caſe was referred to *Forteſcue* J. who went the circuit: And he held it a ſettlement, becauſe the maſter had ſix months to pay the duty in; ſo that during thoſe ſix months a ſettlement was gained; and it ſhould not be in the power of the maſter to defeat it by matter *ex poſt facto.* And purſuant to this opinion, the ſeſſions held it a ſettlement. But upon debate in the king's bench, the order was quaſhed; for they ſaid, it was making the indenture good to one purpoſe, when the act of parliament had made it void to all intents and purpoſes whatſoever. And tho' it was a hard caſe, they could not break thro' the poſitive words of the act. *Str.* 903. 2 *Seſſ. C.* 134.

But upon payment of the duty and penalty, and a receipt thereof from the ſtamp office produced in evidence, the writing is made good. 8 *Mod.* 365.

E. 13 *G.* 2. *North Owram* and *Ovenden.* The mother of *Samuel Spencer* the pauper propoſed to put him an apprentice to a maſter at *North Owram*, who refuſed to take him becauſe he wanted clothes; but propoſed to take him if they would clothe him, or give him money to clothe him with. The grandfather of the boy ſaid he would do ſo. And it was thereupon agreed, that the grandfather ſhould pay 30 s to the maſter to clothe the boy withal, and that the maſter ſhould take him as an apprentice. And in purſuance of that agreement, the maſter did lay out 30 s in clothing for the boy. And afterwards an indenture was drawn and executed by the maſter and the ſaid *Samuel Spencer* the apprentice: And the 30 s agreed to be given and laid out as aforeſaid was paid

paid by the grandfather to the ſaid maſter. And in conſequence thereof, the ſaid apprentice ſerved his ſaid maſter under ſuch indenture and agreement for ſix years in *North Owram*. And in the ſaid indenture a covenant was made and mentioned, for the ſaid maſter to find clothes for the ſaid apprentice during all the ſaid term. But in the indenture no mention was made of the ſaid ſum of 30s ſo agreed to be given as aforeſaid, neither was any duty paid for the ſame, nor was the ſaid indenture ſtamped with the additional ſtamp required by the 8 *An. c.* 9. to denote ſuch ſum given with the apprentice. It was urged, that the apprentice hereby gained no ſettlement; both becauſe the ſum given with him was not inſerted in the indenture in words at length, and alſo becauſe the indenture was not ſtamped with the ſaid additional ſtamp. By the court: The not inſerting in words at length the full ſum received or contracted for, ſubjects the maſter to a forfeiture, but doth not make the indenture void. And upon the ſtate of the caſe, the maſter is to be looked upon in no other condition than if he had been a ſtranger employed as an agent by the grandfather to clothe the boy: And the grandfather was obliged to repay him, and did repay him. This clothing was before the binding: So that it amounts to no more than putting a boy apprentice ready clothed. It is not a præmium received by the maſter. The ſtatute means money given for the benefit of the maſter. But he has no benefit from this 30s. He was not obliged to clothe the boy before he was his apprentice: And this agreement was executed before the indenture was ſealed. And it was adjudged that the apprentice gained a ſettlement under the ſaid indenture. *Burrow's Settl. Caſ.* 145.

E. 19 *G.* 2. *Baxter* and *Fairlam*. The ſingle queſtion upon a demurrer was, whether an indenture of an apprenticeſhip, where 6d is mentioned to be the ſum given with the apprentice, be or be not void for want of the duty being paid for the ſum ſo given. By the court: No duty was ever intended to be paid for ſo inſignificant a ſum, there being no coin in *England* ſmall enough to pay it. And by the act no ſtamp is required for leſs than 20s. 1 *Wilſon.* 129.

H. 28 *G.* 2. *Yarmouth* and *St. Margaret's in Norwich*. The pauper *William Jackſon* was bound and ſerved a ſeven years apprenticeſhip in *St. Julian's, Norwich*. But it appeared that the apprenticeſhip was in conſideration of 6d given to the maſter with the ſaid apprentice, and

no

no duty was proved to be paid for the ſame. It was objected, that this indenture was void to all intents and purpoſes. But on ſhewing cauſe, the point was given up, on the authority of *Baxter* and *Fairlam*. Burrow's Settl. Caſ. 379.

H. 7 *G.* 3. *St. Matthew's Bethnal Green*, and *St. Botolph's Aldgate*. The ſum of 5l was inſerted in the indenture as given with the apprentice, and was paid to the maſter accordingly, and the indenture had no ſtamp denoting the duty of 6d in the pound being paid by the maſter for the ſaid ſum. This ſum was paid out of a voluntary annual ſubſcription for putting out children apprentices brought up at the charity ſchool of the pariſh of *St. John Wapping*; and truſtees are appointed annually for managing the ſaid charity, and a treaſurer. It was objected, that this being a private and not a permanent charity, and conſequently not within the exception of the act of parliament as to *publick* charities, the indenture therefore, not being ſtamped, was void. But by lord *Mansfield* and the court: It is a *publick* charity, and a very laudable one. It is not neceſſary that it ſhould be a permanent charity. The reaſon of the diſtinction between a public and private charity is obvious: a private charity might be calculated to evade the act, but a publick one cannot be ſuppoſed to have been ſo. *Burrow's Settl. Caſ.* 574.

Whether it need be indented.

4. *T.* 5 & 6 *G.* 2. *K.* and *Mellingham*. A perſon was bound by indenture, though not actually indented; and the ſeſſions adjudged the ſettlement on the foot of that binding. Exception was taken, that this was a binding without indenture, and not good; and alſo whatever the writing was, the pauper was no party to it, nor could be concluded by it: And a deed poll will not bind an infant, nor a poor perſon put out by the overſeers without his own contracting; for the ſtatutes which make ſuch covenant binding upon them, do require that the binding be by indenture. And by the court, The exception muſt be allowed, and the order quaſhed. 1 *Seſſ. Caſ.* 330.

And this conſideration was the cauſe of making the ſtatute of the 31 *G.* 2. *c.* 11. above-mentioned, which enacts, That no perſon bound by writing not indented, being legally ſtamped, ſhall be liable to be removed for that defect only.

Infant binding himſelf.

5. *H.* 3 *G.* 2. *Newbury* and *St. Mary's* in *Reading*. A poor boy, of 14 years of age, bound himſelf apprentice for 7 years to a weaver. It was argued that this was not

not a binding according to the ſtatute, and therefore did not gain a ſettlement; and that the indenture was void, becauſe an infant could not bind himſelf. But by the court, It did gain him a ſettlement; for an infant may make an indenture for his own benefit. *Foley.* 154. *Andr.* 373.

6. *M.* 10 *G.* 2. *St. Nicholas*'s and *St. Peter*'s both in *Ipſwich.* There was an indenture of apprenticeſhip for four years; which the apprentice ſerved accordingly: Whereas the ſtatute of the 5 *Eliz.* requires that it ſhall not be for leſs than 7 years. And the queſtion was, whether this ſhould gain a ſettlement? It was urged, that it could not; for that the ſaid ſtatute of the 5 *Eliz.* enacts, that all indentures otherwiſe than by that ſtatute ſhall be clearly void in the law to all intents and purpoſes; and it is appointed by the ſame ſtatute, that perſons dwelling in cities and towns corporate ſhall take apprentices for 7 years at the leaſt, whereas this maſter, dwelling in a town corporate, hath taken this apprentice only for 4 years. But by lord *Hardwicke* Ch. J. and the court: The indenture is not void, but only voidable, at the election of the parties themſelves, if they think fit to to take advantage of it; and not by a third perſon. It can only be avoided by the maſter or ſervant, who were the parties to it; but not by the pariſh, who have had the benefit of the ſervice of this apprentice. And the difference between this, and the caſe of *Cuerden* and *Leyland*, is, that the act about the ſtamps not only ſays, that the indentures not ſtamped ſhall be void, but goes on and adds theſe words, *and not available in any court or place, or to any purpoſe whatſoever*, and that no indenture required by that act to be ſtamped, ſhall be *given or admitted in evidence*, unleſs the party firſt make oath, that the ſum really given with the apprentice, or contracted for was truly inſerted. And yet the order made in that caſe, was grounded upon the indenture, which was not ſtamped, nor was the duty paid. Therefore the juſtices admitted a matter in evidence which they ought not to have done. And it hath been holden, that if the juſtices admit evidence which they ought not to admit, it is a ſufficient reaſon for quaſhing their orders. *Burrow's Set. Caſ.* 91.

Binding for leſs term than 7 years.

7. *T.* 19 *G.* 2. *St. Petrox* and *Stoke Fleming.* *Anne Giles*, the pauper, was bound a pariſh apprentice in *St. Petrox*, until her age of 21, without the alternative *or till time of marriage*, as the ſtatute requires. It was urged, that by this binding and ſervice ſhe gained no ſettlement,

Binding for further term than the law requires.

the binding being contrary to the ſtatute, and therefore void. But by the court, the caſe of *Nicholas*'s and *St. Peter*'s is in point. The indenture is not void, but only voidable by the parties themſelves, if they ſhall think fit to take advantage thereof; but it is neither void nor voidable by the pariſh as to gaining a ſettlement. *Burrow's Settl. Caſ.* 248.

Apprentice ſettled, not removable.

8. An apprentice well ſettled, being with a maſter removable, cannot be removed with him; but the maſter may complain on the covenant. *Caſes of S.* 211.

Sttlement of the apprentice doth not depend on the ſettlement of the maſter.

9. *H.* 4 *Ann. St. Bride*'s and *St. Saviour*'s. A woman who was ſettled at *St. Saviour*'s, with her apprentice by indenture, came and took a lodging in *St. Bride*'s, and there continued above 40 days with her apprentice, who ſerved her there. This was held by the court, to be a ſettlement of the apprentice at *St. Bride*'s, though the miſtreſs had no ſettlement there. 2 *Salk.* 533.

Inhabitancy to be where the party lodges.

10 *M.* 11 *G. St. John Baptiſt* and *St. James's Biſhop Cannings.* Binding and ſerving will not make a ſettlement, but the ſettlement muſt be by inhabiting; which cannot be but where the party lodges. L. *Raym.* 1371. *Str.* 594.

E. 3 *G. K.* and *St. Olave's Jury.* An apprentice is bound to a cobler, who keeps a ſtall in one pariſh, lies in another, and the boy in a third; and the ſeſſions adjudge the ſettlement where the ſtall is, becauſe the ſervice was there. But by the court, the boy has gained no ſettlement in any of the three pariſhes; for the ſtall is not ſufficient to give him one, the maſter lying in another pariſh. And the order was quaſhed. *Str.* 51.

[Note, this caſe ſeemeth to ſtand alone. And by the analogy of the other caſes, with reſpect both to apprentices and ſervants, it ſeemeth that the cobler's apprentice gained a ſettlement in the pariſh where he lodged. A man may be occupied in ſeveral pariſhes in the day time, but his home and habitation ſeems to be where he draws to at night.]

T. 3 *G. St. Mary Colechurch* and *Radcliffe.* A boy was bound apprentice to a ſeafaring man, and ſerved him for a quarter of a year in the day time on land, in the pariſh of *St. Mary Colechurch*, but lay every night on ſhipboard in *Radcliffe.* But the juſtices apprehending the ſettlement to be where the ſervice was, ſend him thither. It was moved to quaſh this order, and was likened to the aforeſaid caſe of the cobler. By *Parker* Ch. J. A man properly inhabits where he lies; as in the caſe where the houſe is in two leets, he is to be ſummoned to that in which

which his bed is. And the order was quaſhed. *Str.* 60. *Caſes of S.* 105. *Foley.* 159.

E. 5 *G.* 3. *Burton Bradſtock* and *Bothenhampton*. *James Capon*, the pauper, was bound apprentice for 7 years to a maſter at *Bridport*, then owner of a ſhip; and the apprentice went on board the ſaid ſhip, and there ſerved his apprenticeſhip. The ſaid ſhip was employed in a coaſting trade from *Bridport* harbour to many other ports. And during all that time, the ſaid harbour was, and was conſidered by the captain and ſailors, as the proper home of the ſhip, and to which ſhe returned at the end of every voyage. And during the laſt 40 days of the apprenticeſhip, the ſaid *James Capon* reſided, lodged, and ſerved his maſter on board the ſaid ſhip in *Bridport* harbour aforeſaid. *Bridport* harbour is a baſon in the pariſh of *Burton Bradſtock*, which by an act of parliament in the 11 *G.* 2. was dug and made on a piece of land lying within the ſaid pariſh of *Burton Bradſtock*. — By lord *Mansfield* and the court: Lodging in a pariſh is the ſame, whether it be on board a ſhip or on land. Caſual reſidences, or accidental inhabitancies, are out of the preſent caſe. This harbour or baſon is ſtated to be the proper home of the ſhip, and to be within the pariſh of *Burton Bradſtock:* And the ſervice was *bona fide*, without any pretence of colluſion, performed in that pariſh. Therefore there ſeems to be no material difference between this caſe, and the ordinary caſes of gaining ſettlements in pariſhes by apprenticeſhip. *Burrow's Settl. Caſ.* 431.

M. 7 *G.* 3. *Caſtleton* and *Hundersfield*. The pauper *John Holroid* was bound to a maſter at *Caſtleton* for 7 years. He worked, dieted, and lodged with his maſter in *Caſtleton* for four years and an half; and then married a woman who lived in *Hundersfield*. After which marriage, he worked and dieted all along with his maſter in *Caſtleton* in the day time, but lodged at nights with his wife at her father's houſe in *Hundersfield*, until the expiration of his apprenticeſhip, which was about two years and an half from the time of his marriage. By the court clearly, he gained a ſettlement at *Hundersfield*, where he lodged. *Burrow's Settl. Caſ.* 569.

11. *T.* 12 *G.* 3. *Charles* and *Knowſtone*. *John Hodge* was bound apprentice by the pariſh of *Knowſtone*, to *John Fiſher* of *Knowſtone*, for an eſtate which *Fiſher* rented of Mr. *Looſemore*; who had covenanted with *Fiſher* to diſcharge him from any expence that he might incur thereby. On *Fiſher*'s application, Mr. *Looſemore*'s widow and re- Settlement where he reſided the laſt 40 days.

preſentative (he being then dead) took the boy; received the pariſh money with him; carried him home with her; and afterwards removed to the pariſh of *Charles*, where the boy reſided with her about three years, and then became a cripple by loſing both his feet. She thereupon returned him to *Fiſher*; who received him, upon her promiſe to pay him all the expence he ſhould be at in taking care of him; and put him to live with his (the boy's) grandmother in *Knowſtone*, at 18d a week; where he reſided above 40 days, and then was diſcharged of his apprenticeſhip by the quarter ſeſſions. After which, two juſtices remove the ſaid *Hodge* from the pariſh of *Knowſtone* to the pariſh of *Charles*, where he ſerved the laſt part of his apprenticeſhip before he became diſabled and incapacitated for further ſervice; and the ſeſſions, upon appeal, confirm their order.—It was moved to quaſh theſe orders; for that the pauper gained a ſettlement in the pariſh of *Knowſtone*, by his laſt 40 days reſidence there.—On ſhewing cauſe, it was argued, that this is not ſuch a reſidence of the apprentice in *Knowſtone* as could gain him a ſettlement: It was only a caſual, accidental, temporary reſidence; and like reſiding in an hoſpital for cure. That *actual ſervice* is neceſſary, in order to an apprentice's gaining a ſettlement. And therefore, this apprentice's legal ſettlement was in *Charles*, where he performed the ſervice of his apprenticeſhip during the ſpace of three years; and not in *Knowſtone*, where he lay ill, as a cripple, and was totally incapable of performing any ſervice at all.—Unto this it was anſwered, that the ſtatute of the 3 *W.* c. 11, ſays only, that "if any perſon be bound by indenture and *inhabit* in any town or pariſh": It ſays nothing about *ſervice*, or performing any thing. Beſides, might not the maſter diſpenſe with the performance of the ſervice? The caſes about caſual reſidence do not apply to this caſe. Here, the maſter was obliged to receive the apprentice again: And *Knowſtone* was the pariſh where the original binding was.—By the court: The performance of *actual ſervice* is not the thing material. It is the *reſidence*, the *inhabitancy* of an apprentice, in a town or pariſh for 40 days, that gains the ſettlement. And this reſidence here ſtated cannot be deemed a caſual reſidence, and therefore is not to be compared to the caſes under that head. The boy was bound to *Fiſher* in *Knowſtone*; reſided about three years in the pariſh of *Charles*; then became a cripple; was ſent back to *Fiſher* at *Knowſtone*; received by him; and put, by him, to live with his grandmother

mother in *Knowſtone*; and reſided there above 40 days, during which time he there gained a ſettlement. *Burrow's Settl. Caſ.* 706.

12. *H.* 10 *G. K.* and *Cirenceſter*. There was an apprentice bound in the pariſh, who lived there off and on for three quarters of a year. Exception was taken, that this was no ſettlement, ſince he might not inhabit 40 days together. But by the court, That is not neceſſary. And the order for making it a ſettlement was confirmed. *Str.* 579. Forty days reſidence ſucceſſively not neceſſary.

13. *E.* 9 *G. St. Olave* and *All Hallows*. If a maſter aſſigns over his apprentice, and the apprentice ſerves in purſuance of that aſſignment; he thereby gains a ſettlement: and it differs not whether he ſerves with one maſter or another; for he ſtill ſerves by virtue of the firſt indenture. 1 *Seſſ. C.* 215. Apprentice aſſigned.

13 *W. Caſtor* and *Aicles*. A poor child being bound at *Caſtor*, his maſter there aſſigned him over to another maſter, who lived in *Aicles*. And it was held, that the poor child ſhould gain a ſettlement at *Aicles*, where his ſecond maſter lived; for though the apprentice was not aſſignable, yet that aſſignment was not merely void, but amounted to a contract between the two maſters, that the child ſhould ſerve the latter. So that this aſſignment is good by way of covenant, though it be not an aſſignment to paſs an intereſt. 1 *Salk.* 68.

E. 7 *G.* 3. *Taviſtock* and *Kelly*. *Roſamond Cock*, a poor boy, was bound a pariſh apprentice to *Richard Rundle* at *Lamerton*, with whom he lived there ſeveral years. Then *Rundle* transferred him by aſſignment to *John Prout* of the pariſh of *Milton Abbot*, with whom he lived till he was twenty years and an half old; at which time he offered his ſervice to *Thomas Maſon*, of the pariſh of *Kelly*. The ſaid *Maſon*, apprehending that he was an apprentice to *Prout*, ſent to *Prout* to know, whether it were with his conſent that *Cock* the pauper ſhould live with him. To which *Prout* anſwered, With all his heart; he might live with *Maſon* or any body elſe, provided he performed his agreement with him, which was, to pay one guinea a year during the remainder of his apprenticeſhip. Accordingly he lived with *Maſon* in the ſaid pariſh of *Kelly*, for a year and upwards. The ſeſſions being of opinion that he gained no ſettlement thereby, vacated the order of the two juſtices, which removed the pauper from *Taviſtock* to *Kelly*. It was moved to quaſh the order of ſeſſions; and urged, that being a pariſh apprentice, and an infant, he could not be transferred without the conſent of the juſ-

tices, and himſelf could give no conſent: and if he could, it would not follow, that he could live in *Kelly* as an apprentice, without the privity of the firſt maſter *Rundle*, and there is no conſent at all from him either expreſs or implied. Lord *Mansfield* ſaid, The only queſtion is, whether *Prout* conſented? and it is clear he did conſent: and his conſent included that of the firſt maſter. And the order of ſeſſions was quaſhed, and the order of the two juſtices affirmed. *Burrow's Settl. Caſ.* 578. *Black. Rep.* 635.

Apprentice ſerving another maſter, but not aſſigned.

14. *M.* 8 *G.* 2. *K.* and *St. George's Hanover ſquare*. *Alice Wheeler* was bound by indenture a pariſh apprentice, to *George Leiceſter*, in the pariſh of *St. George*'s, where ſhe lived above 40 days under the indenture, and gained a ſettlement: Afterwards ſhe was by parol agreement hired out by the ſaid maſter to one *Hall* in the pariſh of *St. Mary le Bon*, and there lived and lodged above 40 days, that is, for the ſpace of one year and upwards, the ſaid apprenticeſhip continuing; and the ſaid *George Leiceſter* her maſter received her wages, and found her clothes: By the court, the apprentice is well ſettled in *St. Mary le Bon*. 2 Seſſ. C. 138. Str. 1001. Burrow's Settl. Caſ. 12.

E. 9 *G. St. Olave*'s and *All Hallows*. A perſon is bound apprentice to a maſter who lives in *St. Olave*'s. Afterwards, the apprentice by his maſter's conſent lives with another perſon in *All Hallows*. By the court; He gains a ſettlement in the laſt place; for a perſon may ſerve his maſter in another pariſh or place; and although he ſerves another man, yet it is by conſent of his maſter, and the benefit accrues to his maſter. *Caſes of S.* 153. *Str.* 554.

M. 3 *G.* Pariſhes of *Holy Trinity* and *Shoreditch*. *Parker* Ch. J. delivered the reſolution of the court. This is an order for the removal of one *Ferrer* from the pariſh of *Holy Trinity* to *Shoreditch*; by which it appears, that *Ferrer* was bound an apprentice to one *Truby*, with intent that he ſhould ſerve *Green*; which he did for three years: And it hath been inſiſted, that he being bound to *Truby*, who lives in *Trinity* pariſh, his ſettlement is there; and not in *Shoreditch*, where the ſervice was. But we are of opinion the juſtices have done right in ſending him to *Shoreditch*, where the ſervice actually was. It is the ſame thing as if *Truby* had turned him over to *Green*; in which caſe there would have been no queſtion, but he had gained a ſettlement in *Green*'s pariſh. *Str.* 10.

T. 19 *G.* 2. *Petrox* and *Stoke Fleming*. *Anne Giles* the pauper was bound a pariſh apprentice to *Rebecca Gregory* of *St.*

St. Petrox, till her age of 21. She ſerved there 5 years; when the ſaid *Rebecca Gregory*, by indorſement on the indenture, delivered up the ſaid indenture, together with all her right, intereſt, and term of years then to come and unexpired, of the ſaid apprentice, to *Philip Foale* of *Stoke Fleming*. And on the ſame day, the ſaid *Anne Giles*, being then of the age of 14 years, did voluntarily bind herſelf apprentice by indenture to the ſaid *Philip Foale*; and ſerved him under the ſaid indenture at *Stoke Fleming* for ſeveral years. The queſtion was, whether a ſettlement hereby was gained at *Stoke Fleming?* It was objected, that here was no regular aſſignment of the firſt indenture to *Philip Foale*, it being only delivered up, but not aſſigned. And the term was not expired, when ſhe bound herſelf to *Philip Foale*. By the court: Tho' an aſſignment of an apprentice, (except in *London*, by cuſtom) cannot ſtrictly be made; yet as this aſſignment was with the aſſent of the miſtreſs, the ſervice under it will be good for the purpoſe of gaining a ſettlement: for the ſervice continued under the firſt binding. *Burrow's Settl. Caſ.* 250.

E. 20 *G.* 2. *Clapham* and *Auſtwick*. *Michael Wilſon* the pauper was bound a pariſh apprentice to one *Thomas Jackſon* of *Auſtwick*, tenant to the reverend Mr. *Jackſon* of *Clapham*, who had covenanted to indemnify his tenant againſt all pariſh charges. *Thomas Jackſon* carried him to his landlord, together with the indenture; who accepted, received, and provided for him. He deſired the mother to provide for the boy; who did ſo, for 3 years, in *Auſtwick*; and the reverend Mr. *Jackſon* paid her 20 *s* a year. Then he lived with him in *Clapham* 8 weeks; and then ran away to his mother, and remained a quarter of a year with her in *Auſtwick*, and the reverend Mr. *Jackſon* conſented to his being there. Then the pauper was placed with his brother, a maſon, in *Auſtwick*, as an apprentice, by the reverend Mr. *Jackſon*, who gave him a new ſuit of clothes. And he ſerved his brother, as an apprentice, a twelvemonth or two, in *Auſtwick*; who took him as an apprentice, and quitted the reverend Mr. *Jackſon* of him. But the repreſentatives of the firſt maſter (who was then dead) knew nothing of this, nor ever aſſented to it; nor any thing of his living with his mother. It was objected, that this ſervice of the third maſter in *Auſtwick* could not be conſidered as a ſervice under an aſſignment, nor as a ſervice under the indenture, for want of the conſent of the firſt maſter. On the contrary, it was inſiſted, that this ſervice muſt be conſidered as under the indenture; the firſt

parol aſſignment being, to this purpoſe, good. *Wilſon* was the legal apprentice of *Thomas Jackſon*, and the equitable apprentice of the reverend Mr. *Jackſon*. A legal aſſignment is not neceſſary. And this is a ſufficient ſervice under the firſt indenture. To this it was replied, that he gained his laſt legal ſettlement at *Clapham*, by the eight weeks ſervice. The agreement with the maſon is not an aſſignment, but an attempt of a new binding, whilſt the firſt indenture was ſubſiſting; which therefore is not good. By *Lee* Ch. J. and the court: The ſtatute only requires a binding by indenture, and gives a ſettlement where the laſt 40 days are ſerved. Here is a binding by indenture; and the firſt maſter delivers over the apprentice and indenture to his landlord, who receives him. This therefore muſt be looked upon as receiving him under the terms of the indenture. If there had been no inhabitancy elſewhere, after the boy's living eight weeks with the reverend Mr. *Jackſon*, at *Clapham*, the ſettlement had been there. But a ſettlement is fixed at *Auſtwick*, by the boy's living there a quarter of a year, with the conſent of his maſter, and after that, by his ſervice to the maſon. There is no ground for the diſtinction, that a ſecond maſter cannot aſſign to a third, that is, ſo far as to gain a ſettlement by the ſervice under it. This was not a new binding to the maſon, for a new contract could not be made whilſt the former ſubſiſted; but the ſervice with the maſon was a ſervice under the firſt binding. *Burrow's Settl. Caſ.* 226.

T. 21 & 22 *G.* 2. *St. Mary Kallendar*'s and *St. Michael*'s. *John Miles* the pauper was bound by indenture an apprentice for 7 years, to *John Gregory* of *St. Michael*'s; and under that indenture, lived with the ſaid *John Gregory*, and ſerved in *St. Michael*'s for five years; and at the end of the five years left his ſaid maſter; and the indentures were exchanged between the maſter and the apprentice's father, by conſent of the apprentice. And about one year afterwards, the father of the ſaid *John Miles* contracted with *William Stockdale* of *Twyford* for binding the ſaid *John Miles* apprentice to the ſaid *William Stockdale* for four years; and in conſequence of that agreement, the ſaid *John Miles* went to the ſaid *William Stockdale* on trial, and lived with him in *Twyford* for one year and three quarters: But no indenture was executed, nor any other agreement made. And while the ſaid *John Miles* lived with the ſaid *William Stockdale*, *John Gregory* his former maſter lived within four miles of *Twyford*, and knew of his being in the ſervice of the ſaid *William Stockdale*. But no other proof was made, that

that the ſaid *John Gregory* conſented or agreed to the ſaid contract made between the ſaid *John Miles*'s father and the ſaid *William Stockdale*. The queſtion was, Whether under the circumſtances of this caſe, any ſettlement was gained at *Twyford*? By *Lee* Ch. J. and the court: There can be no ground to conſider this as a ſettlement at *Twyford*, but upon ſuppoſing the firſt indentures to have ſubſiſted, and that the ſervice at *Twyford* was under them. But that could not be; becauſe the exchange of the indentures certainly amounted, either in law or in equity (and they are the ſame thing in this caſe) to a cancelling of them, and a determination of the apprenticeſhip under them. Beſides, there is no conſent of the original maſter, but the contrary is apparent; his knowledge of the fact doth not at all imply his conſent to the tranſaction. The apprentice's living at *Twyford* was not under, but contrary to the firſt indenture. It was in conſequence of a freſh agreement, and for a new term. *Burrow's Settl. Caſes*. 274.

E. 30 *G.* 2. *Fremington* and *Sherwell*. *Mary Bevans* was bound a pariſh apprentice to one *Richards* in *Fremington*; who, after ſome time, declared that he had no buſineſs for her; and gave her permiſſion to go and work elſewhere, for her own benefit; and on his recommendation ſhe was hired to one Mr. *Nott* at *Sherwell*, from the firſt of *June*, till *Lady-Day*, and ſerved him there, for the wages of 32 s. And then went back to her maſter, with whom ſhe ſtaid 8 days; and then the term of her apprenticeſhip expired. This was held to be a good ſettlement at *Sherwell*; for ſhe was not diſcharged from her apprenticeſhip, nor intended to be ſo. Her maſter only gave her leave to go elſewhere and ſerve another perſon, for her own benefit. She returned to her maſter, and was received by him and ſtaid with him to the end of her term. And conſequently, the ſervice with Mr. *Nott* in *Sherwell* was a continuation of the apprenticeſhip, and performed under it. *Burrow's Settl. Caſes*. 416.

15. *E.* 9 *G.* 3. *Romſey* and St *Michael's Southampton*. *Saul Biſhop* was bound apprentice to *William Kearly* of *All Saints* for four years; and ſerved him there three years. It was then agreed between them two and one *Samuel Dagnell* reſiding in *Romſey* under a certificate from St *Giles*'s in *Reading*, that *Biſhop* ſhould work with *Dagnell* the remainder of his apprenticeſhip: for which, *Kearly* was to receive two ſhillings a week. *Biſhop* accordingly ſerved him, and reſided with him, in *Romſey*. The queſtion was, Whether the apprentice gained a ſettlement by this ſervice

Apprentice of an uncertificated man ſerving a certificate man.

ſervice in *Romſey?* It was argued, that he did; not as ſerving the certificate man, but as ſerving *Kearly* his original maſter in that pariſh. The duty muſt be conſidered as performed to the original maſter; and it was, in the preſent caſe, for his benefit, as well as by his order. The act of 12 *An. c.* 18. doth not extend to this caſe. The words of it are deciſive. They are confined to apprentices bound by indenture to certificated maſters, and claiming ſettlements by ſerving under ſuch indentures of apprenticeſhip to original maſters who came into the pariſh by certificate. But this apprentice was bound to a maſter who was not a certificate man. He was in no ſenſe apprentice to the certificate man; but originally was, and continued to be the apprentice of *Kearly*; and the laſt 40 days of his ſervice, by the permiſſion and approbation of his original maſter, gained him a ſettlement.——On the other hand, it was inſiſted, that the true meaning and conſtruction of the act of parliament is, that no apprentice or hired ſervant ſhall gain a ſettlement in a pariſh, to which the maſter came by certificate, and in which the maſter himſelf was thereby precluded from gaining one. And this aſſignment of the apprentice to a certificate man is exactly within the ſame reaſon, as if the original binding had been to the certificate man.——By lord *Mansfield*: This queſtion is plainer than any argument can make it. The end and intention of the act was, to prevent certificate perſons from bringing a charge upon the pariſhes into which they came by certificate. How then can it be imagined, that another man's apprentice ſhould gain a ſettlement by ſerving him in that pariſh, when his own apprentice is made incapable of doing ſo? And the court were unanimouſly of opinion, that the apprentice gained no ſettlement in *Romſey*. Bur. Settl. Caſ. 640.

Apprentice hiring, the maſter being run away.

16. *E.* 10 *G. Buckington* and *Shepton Bechamp*. The maſter ran away: The apprentice hired himſelf for a year, and ſerved the year. By the court: He gained no ſettlement, not being *ſui juris*, nor of a capacity to hire himſelf; otherwiſe, had it been by conſent of his maſter, or had his indenture been cancelled. *Caſes of S.* 155. L. *Raym.* 1352. *Str.* 582.

Note; In the *Caſes of Settlements*, this caſe is reported under the name of *K.* and *Shipton Currey*; by L. *Raymond*, under the name of *Buckington* and *St. Michael Sebington*; by Sir *John Strange*, under the name of *Packington* and *Chepton Beencham*. None of all which ſeem to exhibit the true names of the contending pariſhes, for there are no ſuch pariſhes as moſt of thoſe here rehearſed; and therefore

fore it is preſumed to inſert the real names of the pariſhes, which theſe appellations ſeem moſt probably to denote, namely, *Buckington* and *Shepton Bechamp*. And here it may be proper to obſerve once for all, the great inaccuracy in the names of places and perſons, which every where occurs in the books of reports, ariſing (as it ſeemeth) from two cauſes. 1. From the reporter's taking down the name in court by the ſound only, which oftentimes may cauſe a wide difference in the orthography. And, 2. From the hand-writing of the reporter perhaps not being very legible; the caſe being taken down in a hurry of the pen, and not publiſhed but by others after the reporter's death. Where the matter is very notorious, liberty hath been taken throughout this book, to reſtore ſuch broken words to their genuine and known originals; ſo as to read inſtead of *Hedcome*, *Hedcorn*; for *Miſſerden*, *Miſſenden*; for *Trenſham*, *Frencham*; for *Wooden*, *Woodend*; for *Yexford*, *Yokesford*; for *Eutoſcatur*, *Uttoxeter*, and many other ſuch like.

Sir *James Burrow*, who from his ſituation, as being maſter of the crown-office, hath opportunity to receive the true names from the records themſelves, is extremely uſeful in this, as in other more important reſpects; and that, not only in the caſes he reports himſelf, but in others occaſionally referred to. In ſpeaking of the proper method of intitling caſes of ſettlement, he obſerves,—"It may not "be amiſs to ſet forth a general rule, for intitling all "caſes ariſing upon orders of removal; the want of "knowing, or the want of attending to which general "rule, hath been the occaſion of infinite confuſion, in "tabling and citing caſes of this ſort. The conſtant "method of entring them in the rule book, is, to name "the *King* as proſecutor: and the pariſh laſt charged with "the pauper, and conſequently appealing to the court of "king's bench, as defendants. For inſtance: Two juſ-"tices remove a pauper from *A.* to *B.*; and *B.* appeals to "the ſeſſions. If the ſeſſions confirm the order, and *B.* "brings the *certiorari*, the rule thereupon is intitled *Rex* "*verſus Inhabitantes de B.* But if the ſeſſions diſcharge "the original order, and conſequently *A.* remains charged "with the pauper, and brings a *certiorari* to remove the "orders, then the rule bears for its title, "*Rex verſus In-*"*habitantes de A.*" (*Burrow, Mansfield.* 52.)—Nevertheleſs, as authors, in reciting theſe caſes, and the learned counſel and the court in their arguments, ſometimes give the name of one of the pariſhes, and ſometimes of the other, and ſometimes of both; and the caſe in ſome inſtances

ſtances may be eaſier apprehended, or explained with leſs circumlocution, by inſerting at the head of it the names of both the contending pariſhes; that method is endeavoured to be purſued throughout this courſe of ſettlements, where both the names can with reaſonable certainty be come at. Sometimes a caſe is reported, without the name of either of the pariſhes, but with the name only of the pauper; as *John Giles*'s caſe, *Bridget Bayly*'s caſe, and the like: In theſe, together with the names of the pariſhes, it ſeemeth eſſential, to retain alſo the name of the pauper.

Apprentice diſmiſſed, but not diſcharged.

17. The ſon was bound apprentice to his father, who afterwards gave up the indentures of apprenticeſhip, but did not cancel them: Then the ſon was hired into another pariſh for a year, and ſerved the year; and being likely to be chargeable, he was ſent by an order to the pariſh where he lived as an apprentice; becauſe, the indentures being not cancelled, he ſtill continued an apprentice there. 1 *Mod.* 190. *Dalt.* 180.

T. 5 *G.* 3. *St. Luke's* in *Middleſex*, and *St. Leonard's Shoreditch*. The pauper *William Hutchins*, was bound a pariſh apprentice to one *Froſt*, a ſhoemaker in *Southwark*, till his age of 24, and ſerved him there three years. The maſter then removed to the pariſh of *St. Luke in Middleſex*, taking the apprentice with him, where he ſerved four years. The maſter then told him to go about his buſineſs, and work for himſelf: But the indentures were not cancelled nor delivered up. The pauper hired himſelf as a journeyman to ſeveral maſters of the ſame trade in different pariſhes; and believed the ſaid *Froſt* did not know what maſter he worked with after he left him, nor ever called upon him to account for what money he earned, and the pauper applied the ſame to his own uſe. He worked and lodged the laſt 40 days before he attained the age of 24 years, in the pariſh of *St. Leonard's Shoreditch*. The queſtion was, Whether he gained a ſettlement at *St Leonard*'s by this ſervice? By lord *Mansfield* and the court: The indenture of apprenticeſhip remained in force; and the relation of maſter and apprentice continued. But this ſervice in *St. Leonard*'s cannot be conſidered either as a ſervice of his firſt maſter, or as an aſſignment. He was incapable of making a contract by way of hiring and ſervice, or of any act to gain a ſettlement. If his maſter had aſſigned him over to a particular perſon, it would have gained him a ſettlement, as a ſervice to the firſt maſter. But this working in *St. Leonard*'s was not carrying on the buſineſs of the firſt maſter there, nor any ſervice under the indenture. But the ſettlement is in that pariſh where he

he had laſt ſerved his firſt maſter as an apprentice for 40 days, which was in *St. Luke*'s. *Burrow's Set. Caſ.* 542. *Black. Rep.* 553.

But it is not neceſſary, in order to a diſcharge, that the indentures be cancelled; it is ſufficient if they be delivered up. *Tichfield* and *Milford*. M. 4 G. 3. Burrow's Set. Caſ. 511.

M. 9 *G.* 3. *Notton* and *Royſtone*. *Benjamin Watſon* the pauper, when an infant, was bound out a pariſh apprentice to *Hannah Cuttle* of *South Heendley* widow, occupier of a farm within the ſaid townſhip, until he ſhould attain the age of 24 years. After he had ſerved about ſix years, ſhe quitted the farm to her ſon *Stephen Cuttle*, and left the apprentice there with him. The ſaid apprentice lived with *Stephen Cuttle* there ſeveral years. Afterwards, being deſirous to leave the ſervice, he applied to his maſter; who told him, he might go where he pleaſed. Whereupon, he hired himſelf at ſeveral places, and received the wages to his own uſe. In *May* 1766, the ſaid *Stephen Cuttle* gave up his indentures to him. In *February* 1767, he hired himſelf to *John Baildon* of *Notton*; and the ſaid *Stephen Cuttle* being told of it in converſation, ſaid, he thought it a good place for him. He ſerved *Baildon* at *Notton* above 40 days, and then attained his age of 24 years.—It was argued, that he gained a ſettlement at *Notton*, by having lived there 40 days, whilſt he continued apprentice to *Cuttle*. *Hannah Cuttle* had not given up the indentures: Her ſon alone could not do it. The maſter being privy to this ſervice of *Baildon*, and conſenting to it, or approving of it, it was then a ſervice of the original maſter, tho' actually done to *Baildon*.—On the other hand, it was inſiſted, that this was no ſervice under the indenture of apprenticeſhip. The pauper hired himſelf as being *ſui juris*. The maſter did not conſent to the pauper's ſerving any *particular* perſon. He was not even conſulted about it. And when he heard of it, he only ſaid, he thought it a good place for him. And he had, before, given him a general leave to go where he pleaſed.—The court were clearly of opinion, that the ſervice with *Baildon* in *Notton* was not a ſervice under the indenture of apprenticeſhip; conſequently, his reſidence in that pariſh upwards of 40 days was not ſufficient to gain the apprentice a ſettlement there. *Burrow's Settl. Caſ.* 629.

E. 15 *G.* 3. *Offerton* and *Stockport*. The pauper, when twelve years of age, was by indenture bound an apprentice by the churchwardens and overſeers for ſeven years. The pauper was a party to the indenture: And it was allowed, purſuant to the ſtatute. Near ſix years after, the pauper and

and his master entred into the following agreement: That the pauper, upon paying his master 12 d a week, and providing for himself, should be at liberty to work for his own benefit, during the remainder of his apprenticeship term; and the master should find him a loom, for the remainder of his apprenticeship; and the master to receive the 12 d a week, as a satisfaction for his service during the remainder of his apprenticeship. The pauper was of the age of 18, at the time of making the agreement. Neither the churchwardens nor overseers were privy to it; nor was the indenture cancelled or delivered up. The pauper married, and removed to *Offerton*, and there worked, during the last 40 days before the justices removed him from thence, with the same tradesman who employed his master: and the master provided him a loom, and knew with whom he was working; but did not give any particular direction or consent. The pauper received the profits to his own use. The master demanded of him the 12 d a week; but the pauper was not able to pay him. The court held, that the apprenticeship continued; that the pauper's service in *Offerton* was a service under it; and that his settlement was in *Offerton*. Bur. Settl. Cas. 802.

H. 16 *G.* 3. *Chudley* and *Ideford*. *Mary Street* the pauper was legally bound apprentice by the parish officers of *Chudley* to *Philip Matthews* of that place, till 21 years of age or day of marriage; and lived with him there four years; when he assigned her, by parole, to *Joseph Stelliford* of *Ideford*; with whom she lived seven months; when she ran away from *Stelliford*, and returned to *Chudley*, and resided there for nine months as a servant to *John Hayes* at a public house, with the knowledge, but without any express consent of *Matthews* or *Stelliford*; and *John Hayes* did not know that the pauper was an apprentice. *Matthews*, the original master, resided in *Chudley*, during the time that the pauper lived with *Hayes*, and frequently saw her there, and applied to *Stelliford* to take her back to *Ideford*, and threatened to put him to trouble if he did not. During the time that she was at *Chudley* as aforesaid, she was taken ill, and part of the time so ill in the workhouse, that she could not be removed, and was then relieved by *Stelliford* in the workhouse there. She never returned to *Ideford*; but continued for the last two years of her apprenticeship in *Chudley* in good health, where the apprenticeship expired.—It was argued, that the pauper's service at *Chudley*, after her return from *Ideford*, was a service under the apprenticeship; being by consent of her master *Stelliford*, who manifestly considered her as his apprentice

apprentice whilſt ſhe reſided there. But by lord *Mansfield*: Here is no conſent of the maſter, either expreſs or implied: His mere knowledge of it doth not imply his conſent. And the whole court were unanimous, that no ſettlement was gained at *Chudley* after the pauper's return from *Ideford*. Bur. Set. Caſ. 821.

At what age an apprentice may conſent to a diſcharge.

18. *H.* 31 *G.* 2. *Auſtrey* and *Grindon*. *Francis Orton*, being then about ten years of age, was in *April* 1744, bound a pariſh apprentice to *Samuel Lythall* of the pariſh of *Grindon*, till his age of 24. He ſerved with his maſter there under the indenture till *Michaelmas* 1754; at which time, the maſter, in conſideration of 40 s then paid to him by the apprentice, agreed to diſcharge him; which receipt and diſcharge were indorſed and written by the maſter on the indenture, which he then delivered up to the apprentice. The ſaid apprentice then went and hired for a year, and ſerved that year in the pariſh of *Higham*. Afterwards, to wit, at *Michaelmas* 1755, he hired for a year, and ſerved that year in the pariſh of *Auſtrey*. He was then upwards of 23 years, but not 24 years of age——The two juſtices remove him to *Grindon*, judging him to have gained no ſettlement under theſe ſervices. The ſeſſions quaſh the order. It was moved to quaſh the order of ſeſſions. Againſt this, it was urged, That the apprentice by his diſcharge became *ſui juris*. No intereſt at all remains in the pariſh officers. Their power is only a limited power. And a pariſh child thus bound, agreeable to the ſtatute of the 43 *El.* is upon the ſame foot as if he had bound himſelf; and when of full age, is at liberty to conſent to his own diſcharge, and thereby to put an end to the apprenticeſhip. But if not, yet the ſervice being by his maſter's leave and conſent, it gains him a ſettlement in the place where it was performed; which was firſt in *Higham*, and afterwards in *Auſtrey*. By lord *Mansfield* Ch. J. The whole depends upon the queſtion, whether he was of age, or under age, at the time of his conſenting to the diſcharge. And by comparing the dates as above, it appears that he was under age; and then his conſent ſignifies nothing. For the conſent of an infant apprentice is, as if he had given no conſent at all. And if ſo, his ſubſequent ſervices can never be conſidered as performed by the maſter's leave and conſent, and ſo, as being a ſervice of his maſter under the indenture; becauſe this is no expreſs and explicit leave and conſent given by the maſter to the particular ſervice (as in the caſe of *Fremington* abovementioned); but was intended to be altogether general, and is even founded in a miſtaken apprehenſion, that the apprentice

apprentice could conſent to his being diſcharged; which he, being an infant, was not capable of doing. And the order of ſeſſions was quaſhed, and the original order affirmed. *Burrow's Settl. Caſ.* 441.

E. 6 *G.* 3. *Eccleſal-Bierlow* and *Warſlow*. The pauper *Samuel Wilſhaw*, being a pariſh apprentice, after he had attained the age of 21 years, agreed with his maſter to cancel the indentures, and the ſame were accordingly cancelled. Afterwards, he was hired for a year, and ſerved that year in *Warſlow*, which was within the term comprehended in the indenture. It was objected, that he was not *ſui juris* when he entered into the contract to ſerve at *Warſlow*; for the binding being by the pariſh under the 43 *El. c.* 2. he could not, tho' above the age of 21, cancel the indentures without the approbation of the overſeers of the poor. By lord *Mansfield* Ch. J. There ſeems to be no neceſſity of the pariſh officers joining in the conſent to diſcharge this apprentice. There is no authority for it. And I ſee no inconvenience to the pariſh, or to any one elſe, in its being done without their concurrence. The act impowers them to bind the man-child out apprentice, till he comes to the age of 24. And the act was neceſſary to make valid the binding of the male pariſh apprentice till his age of 24; for he could not be bound longer than till 21, without the aid of the act. And two juſtices are to aſſent to this. But the ſame reaſon doth not hold, as to the diſcharge of the apprentice. This concerns the maſter and the apprentice only. The latter part of the apprentice's time is of moſt ſervice to the maſter. Therefore the apprentice being of age, if the maſter and he agree to it, they two may diſſolve the contract. If ſo, then this perſon was *ſui juris* when he hired himſelf at *Warſlow*; and conſequently, he gained a ſettlement there by a hiring and ſervice for a year. *Burrow's Settl. Caſ.* 562. *Black. Rep.* 592.

E. 14 *G.* 3. *Chilvers Cotton* and *Weddington*. The pauper *Thomas Lawrence* was born in the pariſh of *Chilvers Cotton*, where his father then reſided under a certificate from the pariſh of *Weddington*. When the pauper was of the age of eight years and a half, he bound himſelf apprentice by indenture, with his father's conſent (who was party to the indenture), to *William Meigh* of the ſaid pariſh of *Chilvers Cotton* for ſeven years, and ſerved him there one year and a half, and then the indenture was deſtroyed, by conſent of the maſter, the father, and the apprentice. The pauper, within half a year afterwards, bound himſelf apprentice by indenture, with his father's conſent, to *Thomas Maydlin*

Maydlin of the pariſh of *Bulkington* for ſeven years, and ſerved him in the ſaid pariſh of *Bulkington* four years, and then this indenture was deſtroyed, by conſent of the ſaid *Thomas Maydlin* the maſter, the father, and the apprentice. The pauper after this returned into the ſaid pariſh of *Chilvers Cotton*, and bound himſelf apprentice to one *Shaw* in the ſaid pariſh of *Chilvers Cotton* for two years, and ſerved him there the ſaid two years. In about three years next after the expiration of the apprenticeſhip to *Shaw*, he hired himſelf for a year to *Lawrence Smith* of the ſaid pariſh of *Chilvers Cotton*, and duly ſerved him in the ſaid pariſh for a year under the ſaid hiring. And having become actually chargeable to the ſaid pariſh of *Chilvers Cotton*, he was removed to the pariſh of *Weddington* which gave the certificate. It was objected, that the pauper did not remain under the character of a certificate perſon, having got clear of that impediment to his gaining a ſettlement in the pariſh to which he was originally certificated, by having obtained a ſettlement in *Bulkington:* After which, he was free to gain a ſubſequent ſettlement in the pariſh to which he was originally certificated. For the child of a certificate perſon, born in the pariſh to which its parent came by certificate, is not under the reſtraint of ſuch certificate as to any other pariſh; but may gain a ſettlement in any third pariſh, by ſerving an apprenticeſhip in ſuch third pariſh.—On ſhewing cauſe, it was inſiſted, that the pauper gained no ſettlement in *Bulkington*. The firſt indenture was not properly cancelled. The infant could not conſent to the diſcharge of it. An infant's conſent is void. And the caſe of *Auſtrey* was relied on, where the infant's conſent was conſidered as no conſent at all. He was therefore a continuing apprentice to *Meigh* of *Chilvers Cotton*, at the time of his being bound to *Maydlin* of *Bulkington*.—Unto which it was anſwered, that they who make a contract may deſtroy it. Here, all who joined in making it have joined in deſtroying it. It muſt be taken that it was for the benefit of the infant to deſtroy it. It was for his benefit that he was bound out again at *Bulkington*, where he gained a ſettlement. And if it was for his benefit to deſtroy it, he might as well join in deſtroying as making it. As to the caſe of *Auſtrey*, it was the caſe of a *pariſh* apprentice, and the general expreſſion there uſed muſt be underſtood according to the ſubject matter, and applied to the circumſtances of that particular caſe. The principle there laid down is, that the apprenticeſhip of an infant cannot be diſſolved without the conſent of all parties concerned. The pariſh officers were there concerned in

the original contract; they were parties, and had not conſented; tho' their conſent, as parties to it, was neceſſary to the diſcharge of it.—— By lord *Mansfield:* The ſingle queſtion is, Whether the indenture of the apprenticeſhip in *Bulkington* was void or not, there having been a former indenture, but ſuch former indenture having been cancelled by agreement between the maſter, the father, and the apprentice? The caſe of *Auſtrey* was determined on particular circumſtances. The queſtion was, Whether the pariſh officers, who bound out the apprentice under a ſpecial authority, ought not to have been conſulted about diſcharging him, and to have given their conſent to it? The whole policy of the 43 *Eliz.* might be defeated, if the maſter and pariſh infant apprentice could by their joint conſent alone, without the conſent of the pariſh officers, diſcharge ſuch a contract, and ſet the apprentice free from it. That caſe therefore is not applicable to the preſent. Here, the original contract was only between the father, the maſter, and the apprentice; and all of them conſent to the diſcharge. An infant may make his condition better, tho' he cannot make it worſe. The reaſon why an infant may bind himſelf apprentice is, becauſe it is for his benefit. If he was diſcharged of the former indenture, he was at liberty to execute another. *Bur. Sett. Caſes.* 766.

Apprentice bound before the execution of a certificate.

19. *H.* 32 *G.* 2. *St. Cuthbert*'s and *Weſtbury.* A perſon, ſettled at *St. Cuthbert*'s, was bound apprentice to a man reſiding at *Weſtbury*, but whoſe ſettlement was at *Harptree*, a neighbouring pariſh. After the apprentice had ſerved 22 days, his maſter obtained a certificate from *Harptree*, and delivered it to the overſeers at *Weſtbury*; and the apprentice ſerved there further with his maſter for three years. The queſtion was, Whether the apprentice hereby gained a ſettlement at *Weſtbury?* By the court: Before the act, ſerving under an apprenticeſhip to a certificate man for 40 days in the pariſh where the maſter lived, would have gained a ſettlement to the apprentice. But the act ſays, that if any perſon ſhall be bound apprentice by indenture to any perſon *reſiding under a certificate*, he ſhall not thereby gain a ſettlement. Now here is no ſervice for 40 days, under an apprenticeſhip to a maſter who did not reſide in this pariſh under a certificate; and therefore the apprentice in this pariſh did not gain a ſettlement. But it would have been otherwiſe, if he had ſerved 40 days, before his maſter became certificated. *Burrow's Settl. Caſ.* 470.

Maſter dying.

20. *T.* 13 *G.* 2. *Eaſt Bridgeford* and *Orſton.* The maſter of a pariſh apprentice dying inteſtate, his widow, without

without any adminiſtration taken out, aſſigned the apprentice to *Edward George*; who with the conſent of the apprentice, aſſigned him over, by verbal agreement, to *Thomas Baggaley* of *Eaſt Bridgeford*, for the remainder of his term of 9 years. And he accordingly lived with the ſaid *Thomas Baggaley* at *Eaſt Bridgeford*, and ſerved out his time there, which was more than 40 days. This was unanimouſly holden to be a good ſettlement in *Eaſt Bridgeford*. For tho' an aſſignment of an apprentice be not ſtrictly legal, yet where an apprentice has lived and ſerved 40 days under an aſſignment, he ſhall gain a ſettlement, becauſe of the conſent, even tho' it be only a verbal agreement. *Burrow's Settl. Caſ.* 133.

E. 26 *G.* 2. *Eakring* and *Selſon*. Two juſtices make an order to remove *George Witworth* from *Eakring* to *Selſon*. Upon appeal, the ſeſſions diſcharge that order. The caſe was, the ſaid *George Witworth* was put out a pariſh apprentice to *Richard Tomlinſon* of *Eakring* till his age of twenty years. He ſerved his maſter under this indenture for ſeveral years at *Eakring*. About three years before he attained twenty years of age, he ran away from his maſter, and loitered for ſome time about the country. In the mean time his maſter died. And at *Martinmaſs* after, the ſaid *Witworth* hired himſelf as a ſervant to *William Flint* of *Selſon* for a year, and ſerved him that year at *Selſon*, and received all his wages to his own uſe, the executors of *Tomlinſon* taking no notice of him. But he had not, at the expiration of the ſaid ſervice, attained his age of twenty years. And the ſeſſions being of opinion, that the ſaid *George Witworth* did not, by virtue of ſuch hiring and ſervice at *Selſon*, gain a ſettlement in the pariſh of *Selſon* aforeſaid, reverſe the original order. But by the court the order of ſeſſions was quaſhed; for that after the maſter's death, the apprentice was at liberty to hire himſelf; and as he was hired for a year and ſerved a year in *Selſon*, his legal ſettlement was there. Apprenticeſhip is a perſonal truſt between the maſter and ſervant, and is determined by the death of either maſter or apprentice. The counſel who were to have ſhewn cauſe againſt quaſhing the order of ſeſſions, owned that it was not defenſible. *Bur. Sett. Caſ.* 320.

T. 14 *G.* 3. *Wrexham* and *Chirk*. An apprentice bound for three years, without any conſideration, to a ſlater at *Wrexham*, ſerved under the indenture for nine months: Then his maſter died; and he continued a fortnight with the widow, to complete the work unfiniſhed by his maſter. Then, his miſtreſs, having no employment

for him, told him that he muſt not ſtay with her, and that he was at liberty to go where he thought proper. On his going away, he told his miſtreſs that he was going to his father, who was a ſlater. There was no particular agreement between his father and his miſtreſs, nor the indenture delivered up. His father then lived in the pariſh of *Chirk*, and he continued with him there two or three years. The court held that his ſettlement remained at *Wrexham*. The widow doth not appear to have had any intereſt; and no adminiſtration appears to have been taken out. *Bur. Sett. Caſ.* 782.

H. 19 *G.* 3. *Otterton* and *Stockland.* Caſe ſpecially ſtated; That the pauper was bound apprentice by the pariſh officers of *Stockland* to *John Davis* of that ſame pariſh till 24 years of age: That he lived with him four years in that pariſh under the indenture, when his maſter died: That he continued with his maſter's ſon, who was his executor and had proved the will, for about ſeven years in that pariſh, when, being deſirous of living with his uncle in the pariſh of *Otterton* to learn the trade of a miller, his uncle and he applied to the executor for his conſent, who gave his conſent accordingly: That thereupon the pauper went to his uncle in the pariſh of *Otterton*, and continued there with him the whole two years and an half, at the end of the firſt four months of which time, the pauper attained his age of 24 years.——It was argued on the one hand, that the contract between a maſter and his apprentice is merely perſonal, and dies with the maſter. That by law there can be no valid aſſignment of an apprenticeſhip. That an aſſignment is indeed evidence of the original maſter's conſent to the apprentice's reſidence with the new maſter, but here the preſumption failed, becauſe the original maſter did not exiſt when the pauper was aſſigned. —— On the other ſide it was contended, that if an apprentice reſides in a pariſh by the conſent either of his maſter, or of the executor or adminiſtrator of the maſter, he gains a ſettlement. That here had been no diſſolution of the apprenticeſhip by the act of the parties, and that no caſe went ſo far as to decide that an apprenticeſhip is of courſe diſſolved by the death of the maſter. That it had only been decided that an apprentice could not be compelled to ſerve the maſter's repreſentative. And ſeveral caſes were cited, but that which was chiefly relied on was the caſe of *Eaſt Bridgeford*, as having gone much farther than this, becauſe there the aſſignment was by a perſon who had only the right to the adminiſtration, but had not adminiſtred.—By lord *Mansfield:* Tho' an apprentice is not

not ſtrictly aſſignable, nor tranſmiſſible, yet if he continue with the conſent of all parties and his own, it is a continuation of the apprenticeſhip. The caſe of *Eaſt Bridgeford* is much ſtronger than this. *Douglas.* 69.

21. *M.* 5 *G.* 2. *Salford* and *Storeford.* It was moved to quaſh an order of two juſtices confirmed at the ſeſſions. The ſeſſions ſtate the caſe ſpecially, that one *Lineacre* had been bound an apprentice by indenture, and ſerved his maſter the laſt two years of his apprenticeſhip in the pariſh of *Salford*; but that his indenture was not ſtamped. However, the juſtices adjudged this to be a good ſettlement by way of ſervice, though not as an apprenticeſhip; and accordingly removed his wife and two daughters from the pariſh of *Storeford* to the pariſh of *Salford.* But the court held this to be no ſettlement, on the authority of *Cureden* and *Lieland*; and quaſhed the order. 2 *Barnardiſt.* 39.

Apprenticeſhip not good by indenture, ſhall not enure as a ſervice.

T. 5 *G.* 3. *Whitchurch Canonicorum* and *Wotton Fitzepayne.* The pauper *John Gay*, being of the age of 22 years, agreed with a ſtone maſon that he ſhould take the ſaid *John Gay* apprentice for 6 years, to teach him the trade, and that indentures ſhould be executed accordingly. He went and ſerved 5 years, when they parted by conſent; but no indentures were ever executed. It was contended, that this was as good as a hiring and ſervice. But by the court, Here is no hiring expreſſed or implied. The objects are different. A binding as an apprentice, and a hiring as a ſervant, cannot be converted one into the other. And the caſe of the *King* and *St. Mary Kallendar* in *Wincheſter* was mentioned as in point. *Burrow's Settl. Caſ.* 540.

H. 10 *G.* 3. *Peterchurch* and *All Saints* in *Hereford.* The pauper, *Abraham Lewis*, when a boy, together with his father, entered into an agreement in writing, not ſtamped, with Mrs. *Tringham* of *All Saints*, reciting, that "whereas the boy, with the conſent of his father, is to "be bound apprentice to her for ſeven years," ſhe agrees to pay the boy 25 s the firſt year, the four following years 50 s each, the ſixth year 3 l, and the ſeventh year 4 l. He ſerved her two years, and received the money agreed on for the ſaid time; then left his miſtreſs: and no indenture of apprenticeſhip was ever executed. It was argued, that the pauper in this caſe was to be conſidered as a *ſervant.* Every thing here ſtated was ſervice. Nothing was to be learned. And he was paid wages by his miſtreſs. He was hired for ſeven years; and ſerved two of them; and received the money for that time, according to the agree-

ment.——But by the court: An *apprenticeſhip* was certainly the thing in view. But no indenture was executed; nor could the agreement be eſteemed to ſupply the want of it, as it was not ſtamped. Nor can it be conſidered in the nature of a *ſervice:* For in that caſe there muſt be a hiring for a year, and a ſervice for a year under ſuch hiring. And the binding as an apprentice cannot be converted into the hiring as a ſervant. *Bur. Settl. Caſ.* 656.

Indenture not produced, how far parol evidence ſhall be admitted.

22. *T.* 13 & 14 *G.* 2. *Eaſt Knoyle* and *Teffont Magna.* Two juſtices make an order to remove *Anne Bowles*, wife of *James Bowles* (who had run away and left her) from *Teffont Magna* to *Eaſt Knoyle.* Upon appeal, the ſeſſions confirm that order, and ſtate the caſe thus: It appearing to this court, upon the evidence now given, that the ſaid *James Bowles* was bound an apprentice by indenture, to one *William Wilkins* of the pariſh of *Eaſt Knoyle*, and that he ſerved 3 years at *Eaſt Knoyle* aforeſaid under the ſaid appenticeſhip; at which time the ſaid *William Wilkins* the maſter died; and that the ſum of 5 l, being the full conſideration money, was paid by his father with the ſaid apprentice for ſuch his binding: But the indentures of apprenticeſhip were not produced; neither did it appear to this court whether the duty of 6 d in the pound directed to be paid by the ſtatute of the 8 *An. c.* 9. was paid, or whether the ſaid indentures were ſtamped as the ſaid ſtatute requires.——It was objected, That the juſtices had admitted evidence that was not legal: That they admitted parol evidence of an indenture, which they ſtate not to have been produced, and have not given any reaſon why it was not produced, nor did it appear to them that the duty was paid, or whether the indentures were ſtamped as aforeſaid. But Mr. Juſtice *Page* and Mr. Juſtice *Chapple* (the only two juſtices that were in court) over-ruled the objection, and refuſed to make a rule to ſhew cauſe. For it is ſtated, that it appeared to them that he was bound by indenture. Perhaps the indenture was loſt. Nor do they ſay that the duty was not paid, or that the indenture was not ſtamped. *Burrow's Settl. Caſ.* 151.

T. 22 & 23 *G.* 2. *St. Helen's Abingdon* and *St. Saviour's Southwark.* Two juſtices made an order to remove *Anne Hutt*, wife of *Joſeph Hutt* (who had abſconded for 6 months) from *St. Saviour's* to *St. Helen's.* And the ſeſſions upon appeal confirm that order, and ſtate parol evidence produced before them of an indenture of apprenticeſhip (not produced) of *Joſeph Hutt* the father to *William Hutt* the grandfather. Upon the whole of which, it appeared that the indenture was not produced, and probably

bably (even to very ſtrong preſumption) was never ſtamped. It was moved to quaſh theſe orders, for that there is only parol evidence of an indenture, which ought itſelf to have been produced; and it doth not appear to have been ſtamped. And by the court: There is not enough ſtated to ſhew, that this is a binding within the act. And the orders were quaſhed. *Burrow's Settl. Caſ.* 292. 735.

Indeed parol evidence of an indenture ought to be admitted with great caution, and not without ſufficient proof that the original could not be come at. And in caſe of parol evidence, it ſeemeth that all thoſe circumſtances, without which the indenture would not be good if produced, ought to be proved ſatisfactorily to the court: as, that the indenture was written upon ſtamped paper or parchment; that it was executed by the parties: what ſum (if any) was given with the apprentice; and that an additional ſtamp upon the account of ſuch ſum of money or other valuable thing was alſo impreſſed. Otherwiſe, where the indenture upon the face of it would be bad, it may poſſibly be ſecreted by thoſe whoſe intereſt it is that it ſhould not appear.

vi. Of ſettlement by ſervice.

In like manner as under the laſt head, I will firſt ſet down the whole law relating to the ſubject before us, and then the adjudged caſes upon the ſeveral branches thereof.

Statutes concerning ſettlement by ſervice.

By the 13 & 14 *C.* 2. *c.* 12. *On complaint by the church-wardens or overſeers, within* 40 *days after any perſon ſhall come to ſettle in any tenement under* 10 *l a year, two juſtices,* (1 Q.) *may remove him to the place where he was laſt legally ſettled, either as a native, houſholder, ſojourner, apprentice, or ſervant, for the ſpace of* 40 *days at the leaſt.*

But by the 1 *J.* 2. *c.* 17. *The forty days continuance ſhall not make a ſettlement, but from the time of delivering notice in writing.*

And by the 3 *W. c.* 11. *From the publication of ſuch notice in the church.*

But by another clauſe in the ſaid act of the 3 *W. If any unmarried perſon, not having child or children, ſhall be lawfully hired into any pariſh or town for one year, ſuch ſervice ſhall be adjudged and deemed a good ſettlement therein, tho' no ſuch notice in writing be delivered and publiſhed.*

And by the 8 & 9 *W.* c. 30. *Whereas ſome doubts have ariſen touching the ſettlement of unmarried perſons, not having child or children, lawfully hired into any pariſh or town for one year, it is enacted and declared, that no ſuch perſon ſo hired as aforeſaid, ſhall be adjudged or deemed to have a good ſettlement in any ſuch pariſh or townſhip, unleſs ſuch perſon ſhall continue and abide in the ſame ſervice during the ſpace of one whole year.*

By the 12 *An. ſt.* 1. c. 18. *If any perſon after* June 24, 1713, *ſhall be a hired ſervant with any perſon, who did come into, or ſhall reſide in any pariſh, townſhip, or place, by means or licence of a certificate, and not afterwards having gained a legal ſettlement in ſuch pariſh, townſhip, or place; ſuch ſervant ſhall not gain any ſettlement in ſuch pariſh, townſhip, or place, by reaſon of ſuch hiring or ſervice, but ſhall have his ſettlement as if he had not been an hired ſervant to ſuch perſon.* ſ. 2.

And by the 9 & 10 *W.* c. 11. *No perſon who ſhall come into any pariſh by a certificate ſhall be adjudged, by any act whatſoever, to have procured a legal ſettlement in ſuch pariſh, unleſs he ſhall* bona fide *take a leaſe of a tenement of* 10*l a year, or ſhall execute an annual office in ſuch pariſh:* (And conſequently ſhall gain no ſettlement by ſervice.)

General expoſition of hiring and ſervice.

On complaint within 40 *days*] By the ſtatute of *C.* 2. perſons became ſettled, if not removed, in 40 days. But whereas people came privately into pariſhes, and continued perhaps 40 days, before they were publickly known to be there; therefore the ſtatute of the 1 *J.* 2. did provide, that ſuch 40 days ſhould not gain a ſettlement, but after the time of delivering notice in writing to the overſeers, that ſuch perſon was come to inhabit in ſuch pariſh. And whereas in that caſe, the overſeer to whom ſuch notice ſhould be delivered, either through ignorance or wilfulneſs, might conceal ſuch notice from the inhabitants; therefore the 3 *W.* did provide, that ſuch 40 days ſhould be accounted from the time of the publication of ſuch notice in the church, and not otherwiſe. But then by the ſubſequent clauſe of the ſtatute of the 3 *W.* it is enacted, that *if any unmarried perſon, not having child or children, ſhall be lawfully hired into any pariſh or town for one year, ſuch ſervice ſhall be adjudged a good ſettlement therein, though no ſuch notice in writing be delivered and publiſhed:* And the reaſon thereof is this, becauſe that ſuch notice would not avail; for that the juſtices upon complaint of the overſeers, who are no parties to the contract, cannot

make void the contract between the maſter and ſervant, by which the ſervant is bound to continue with his maſter, if he requires it. And therefore upon this act, if the ſervant was hired for a year, and ſerved 40 days under that hiring, he was not removeable, and gained a ſettlement; and ſo in every place where he ſerved 40 days under ſuch hiring, he there gained a ſettlement; and where he ſerved the laſt 40 days, there was his laſt ſettlement. But this eaſy method of acquiring ſettlements, cauſing ſervants to become inſolent, at laſt the ſtatute of 8 & 9 *W.* was made, which enacteth, that *no ſuch perſon ſo lawfully hired into any pariſh or townſhip ſhall be adjudged to have a good ſettlement there, unleſs he ſhall continue in the ſame ſervice during the ſpace of one whole year.* But if he ſhall continue in ſuch ſervice during the ſpace of one whole year, his ſettlement in all other reſpects ſhall be as before; that is to ſay, every continuance of 40 days unremoveable during ſuch ſervice for the year ſhall be deemed a ſettlement; and where he continues the laſt 40 days, there is his laſt ſettlement. But there hath been much doubting, what ſhall be deemed a hiring for a year, and alſo what ſhall be deemed a ſervice for a year, within the ſenſe of theſe ſtatutes; and what relation ſuch hiring and ſervice ſhall bear to each other: The arguments for and againſt which on each ſide, in the adjudged caſes hereafter following, will be the better underſtood, from this ſhort hiſtorical account which hath been given, of the progreſs of the law relating to this matter.

Forty days' reſidence neceſſary to a ſettlement.

Forty days.] Leſs than 40 days reſidence in any pariſh will not gain a ſettlement. As in the caſe of *Goring* and *Moleſworth*, *E.* 4. *G.* 2. A perſon was hired for a year, and ſerved the year. His maſter lived at *Goring*, and kept a boat, which navigated from *Goring* to *London*, but the ſervant was not 40 days in the whole year at the pariſh of *Goring*, but ſerved out the year on board the boat. By the court, This was no ſettlement at *Goring*. Seſſ. C. V. 1. 327. Caſ. of Settl. 219. 1 Barnardiſt. 436.

But it is not neceſſary that the ſervant reſide 40 days together without interruption. As in the caſe of *Greenwich* and *Longdon*, *M.* 18 *G.* 2. *George Wall* was hired for a year and ſerved a year, as a livery ſervant, at 7 l wages, to one captain *Saunderſon*, commander of the *William and Mary* yacht, who had an houſe and family at *Greenwich*, and reſided there when not abſent on the king's ſervice. His maſter made frequent voyages to and from *Holland*, and he always attended him in the ſame; and

and he was never forty days together at *Greenwich*, but during his ſervice, he was there 40 days at different times. By the court: It need not be 40 days all together; it is ſufficient if within the year he reſide 40 days in the whole. *Burrow's Settl. Caſ.* 243.

E. 16 *G.* 3. *Loweſs* and *Lanſtephan.* The pauper was hired for a year to *John Williams* of *Lanſtephan*, where his maſter occupied his own ſtate. He continued there with his maſter in *Lanſtephan* till ſome time before *St. Peter's-tide*, when his maſter and family removed to *Loweſs*, in which pariſh his maſter rented another farm. He continued with his maſter in *Loweſs* till the 16th of *January* following; when his maſter and family removed to *Lanſtephan*, and his maſter afterwards conſtantly reſided there. But the pauper was ſent back by his maſter to *Loweſs*, to thraſh the corn and look after his maſter's cattle. The pauper ſtaid in *Loweſs* two or three nights and days, and eat and lodged there; and then returned again to *Lanſtephan* in like manner as aforeſaid; and ſo continued between the ſaid pariſhes to the end of his year, which was the 17th of *May* following. The pauper never continued forty days together in either of the two pariſhes after the ſaid 16th of *January*, but lived and reſided as aforeſaid more than forty days in the whole, in each. He verily believed, he reſided moſt at the latter part of his ſervice in *Lanſtephan*, and lodged there the laſt night; and went from thence in the morning to *Loweſs*, and took ſome cattle of his maſter's from thence to the Hay-fair, where he finiſhed his ſervice. The court held him to be laſt legally ſettled in *Lanſtephan*. Bur. Set. Caſ. 825.

And in like ſort was determined the caſe of *Hulland* and *Bradley*, *E.* 21 *G.* 3. namely, that when a perſon has reſided part of the year in one pariſh, and part in another, at different times and intervals, making when added together more than forty days in each, his ſettlement is in the pariſh where he lodged the laſt night. *Douglas.* 633.

Whether the ſervant may be removed from the maſter.

Two juſtices (1 Q.) *may remove him*] But it hath been obſerved before, that the juſtices upon the complaint of the pariſh officers, cannot remove the ſervant from his maſter; becauſe they cannot upon ſuch complaint diſſolve the contract betwixt the maſter and his ſervant, to which contract the officers are no parties; for that can only be done upon the complaint of the maſter or ſervant. Therefore if a maid ſervant ſhall happen to be with child, which child is likely to be born a baſtard; yet if her maſter is willing to keep her, the pariſh cannot remove her; but the maſter, if he pleaſes, may complain to a juſtice of the peace,

peace, that ſhe is leſs able to perform the ſervice, and the juſtice (if he ſees cauſe) may diſcharge her, and then the pariſh by order of two juſtices may remove her.

But although regularly the ſervant cannot be removed from the maſter, yet the maſter may be removed from the ſervant; as if the ſervant hath gained a ſettlement in the pariſh, and the maſter hath gained none, which may often happen, the ſettlement of the ſervant no way depending upon the ſettlement of the maſter; in ſuch caſe, if the pariſh will remove the maſter, they cannot remove the ſervant; but the maſter may complain to the juſtices, who may compel the ſervant to go along with him.

If any unmarried perſon not having or child or children.] *E.* 10 *An. Antony* and *Cardigan.* A perſon having a daughter, which daughter was married and ſettled elſewhere, hired himſelf for a year, and ſerved the year: By the court, He is a ſingle perſon within the meaning of the act, tho' not expreſsly within the letter of it. The meaning of the ſtatute was, that he might not bring any conſequential damage to the pariſh, which he cannot poſſibly do here. And they held that the man, notwithſtanding he had a child, gained a ſettlement by virtue of that ſervice. *Caſes of S.* 7. *Foley.* 131. Unmarried perſon, hiring.

E. 1 *An. Farringdon* and *Witty.* A ſervant hired for a year, ſerved half a year of the time, and married. The queſtion was, Whether the juſtices, on complaint of the overſeers, could make an order to remove him to the place of his laſt legal ſettlement? By the court, The contract between the maſter and ſervant was not diſſolved by the marriage; and admitting it might be diſſolved by an order made on complaint of the maſter, yet without that, and upon complaint of the officers only, it could not be diſſolved. And the marriage doth not hinder the ſervice; the contract continues; and if the man performs his ſervice, he gains a ſettlement. 2 *Salk.* 527.

The ſame reſolved, *M.* 1 *G.* 2. *K.* and *Sutton.* 2 Seſſ. C. 121.

T. 27 *G.* 2. *Hanbury* and *Tardebigg.* The pauper was hired for a year at *Hanbury*; ſerved three quarters of the year; then married; whereupon his maſter took him before a juſtice, who allowed the maſter to diſcharge him for marrying within the year, but made no order in writing. The queſtion upon this was, Whether the ſervant was properly diſcharged within the ſtatute of the 5 *El. c.* 4. *ſ.* 5. By *Lee* Ch. J. and the court: Here is no act of juriſdiction in the juſtice, having made no order in writing. Though the maſter might diſpenſe with the ſervice by

by parol, a juſtice of the peace cannot, who hath his juriſdiction by ſtatute, and every thing he does in purſuance of it muſt be by order, and that is examinable in the court of king's bench. Therefore the court held, this was no diſcharge of the ſervice. And they ſaid that the juſtice can only, by the ſaid ſtatute, diſcharge for *reaſonable* cauſe; and that marriage itſelf, as ſuch, is not a reaſonable cauſe; the ſame being no offence, nor inconvenience to the public. *Bur. Set. Caſ.* 322.

E. 31 *G.* 2. *Bank Newton* and *Marton*. *George Ayrton*, the pauper, and his wife, being legally ſettled at *Bank Newton*; he the ſaid *George Ayrton*, on the 16th of *February* 1738, agreed with *John Wilcock*, ſon of *Henry Wilcock* of *Marton*, by order and on behalf of his ſaid father, to ſerve the ſaid *Henry Wilcock*, for a year from the 24th of the ſame month of *February* (when his father's then ſervant was to go away), at 5 guineas wages, in caſe the ſaid *Henry Wilcock* ſhould approve the ſaid terms. On the 18th of the ſaid *February*, the wife of the ſaid *George Ayrton* died, without iſſue. On the 24th of the ſame month, the ſaid *George Ayrton* went to *Henry Wilcock*, and *Henry* aſked him, upon what terms his ſon and he the ſaid *George* had agreed? Which terms he the ſaid *George* repeated, as above. Whereupon, he the ſaid *Henry Wilcock* ſaid, that he did agree to the ſaid terms. And the ſaid *George Ayrton* did then enter upon, and continue in the ſaid ſervice for a year. It was objected, that this man was not an unmarried perſon at the time of the hiring, to wit, on the 16th of *February*.—Unto which it was anſwered, that the contract was not compleat, but a mere nullity, till the aſſent of the principal (the father) which was, on the 24th. For he had it in his power to diſapprove. It was not binding, till his aſſent was given. For the agent only acted under a limited authority. And when the principal did aſſent, the ſervant was unmarried.—And by the court, it is clear, that the hiring was on the 24th. For the father might have diſſented from the conditional agreement made by his ſon on the 16th. And, conſequently, they held, that this hiring and ſervice did gain a ſettlement at *Marton*, where the ſervice was performed. *Burrow's Settl. Caſ.* 455.

Hiring for a year.

Shall be lawfully hired into any pariſh or town for one year] Theſe words do introduce one great ſubject of debate, namely, What ſhall be deemed a ſufficient *hiring for a year* within theſe ſtatutes, by virtue whereof a perſon ſhall be intitled

intitled to gain a ſettlement? Concerning which it hath been reſolved as follows:

(1) *M.* 9 *An. Dunsford* and *Ridgwick*. A perſon was hired for half a year, and after that was hired again for another half year, with the ſame perſon, and thereupon ſerved a year in one continued intire ſervice, but by ſeveral hirings. By the court: It ought to be one intire contract and one intire ſervice; the one is required by the ſtatute, as well as the other. If a ſervice under ſeveral contracts ſhall gain a ſettlement, one that ſerves by the month, by the week, or by the day, may, if he continues a year, gain a ſettlement. One may hire by the day for charity; but there is danger of being chargeable in hiring ſuch a perſon by the year. For ſuch a term as a year, it is not ſuppoſed a maſter would hire one, unleſs able of body, and ſo a perſon not likely to become chargeable. 2 *Salk.* 535. To be by one intire contract.

M. 12 *An. Horſham* and *Shipley*. A perſon was hired from *May-day* to *Lady-day*, then from *Lady-day* to *May-day*; and ſo on again in like manner for another year. The queſtion was, Whether this gained a ſettlement? And the court were of opinion, it did not; for they ſaid the hiring muſt be for a year. *Foley*. 134.

H. 11 *G.* 3. *Great Salkeld* and *Lowther*. Two juſtices removed *Catharine Nicholſon* from *Great Salkeld* in *Cumberland* to *Lowther* in the county of *Weſtmorland:* And the ſeſſions, upon appeal, confirm their order; ſubject to the opinion of the court of king's bench, on the following caſe.——The pauper was hired to *William Thompſon* of *Hackthorpe-hall* in the pariſh of *Lowther* from *Whitſuntide* to *Martinmaſs*; and again was hired to the ſaid *Thompſon*, at *Hackthorpe*, for the ſucceeding half-year from *Martinmaſs* to the *Whitſuntide* following; and in purſuance of thoſe hirings, ſerved the ſaid *William Thompſon*, at *Hackthorpe* aforeſaid, for the complete year, without leaving her ſervice; and received two half years wages. It was further ſtated, that the uſual cuſtom of hiring ſervants in *Cumberland* is from half year to half year: That it hath been the invariable practice of the quarter ſeſſions of *Cumberland*, as long as can be remembered, to adjudge that the ſaid hiring for two ſucceſſive half years, and ſervice in purſuance thereof for one whole year, with the ſame perſon and in the ſame place, ſhould be a ſettlement under the ſeveral acts of parliament made relating to the poor.——It was moved to quaſh theſe orders, as here was no hiring for a year. Mr. *Wallace* was to have ſhewed cauſe, on behalf of the pariſh of *Great Salkeld*; but he candidly

candidly acknowledged that the orders could not be ſupported, there being no hiring for a year. *Burrow's Settl. Caſ.* 674.

General hiring implies hiring for a year.

(2) *H.* 24 *G.* 2. *Wincaunton* and *Crediton*. A boy of 17, born in *Wincaunton*, offered himſelf to ſerve *Samuel Williams* of *Charleton Horethorne*; who hired him to ſerve him in huſbandry, and agreed to give him meat, drink, waſhing, lodging, and cloaths when wanted; but no particular time was agreed on, and the pauper apprehended his maſter might have been off, or he might have gone away from him, at their pleaſure: nevertheleſs there was no agreement for that purpoſe. The boy continued and ſerved him in *Charleton Horethorne* two years and an half. By the court: He gained a ſettlement there, by this ſervice. A general hiring is a hiring for a year. And here are no circumſtances in this caſe, to ſhew an intention to the contrary, or to vary it from the general rule. The mere apprehenſion of the pauper doth not do it. *Burrow's Settl. Caſ.* 299.

E. 33 *G.* 2. *Handley* and *Berwick St. John's*. The pauper, ſettled at *Handley*, happening to meet Mr. *Jones*, head keeper of *Ruſhmore Lodge* in the pariſh of *Berwick St. John*, who had then lately parted with one *Edward Hill*, who had been for many years one of his ſervants or under-keepers, at the wages of 31 a year and a keeper's livery, beſides meat, drink, and lodging; the ſaid Mr. *Jones* addreſſed the pauper thus, Do you like the life of a keeper? Which being anſwered in the affirmative, he ſaid further, Then go into *Ned Hill*'s place, and you ſhall want no encouragement. Accordingly he went, and continued in the ſervice for 3 years, and received 3 years wages. The queſtion was, Whether this converſation amounted to a hiring for a year, ſo as to gain a ſettlement? It was urged, that a hiring generally is hiring for a year, and that the law knows no other ſervant but one for a year; and that this has an expreſs reference to *Hill*'s ſervice, which was for a year: On the contrary, it was argued, that here was no actual hiring at all; and none can ariſe by implication, from the bare ſervice alone; and that the reference to *Ned Hill*'s ſervice relates to *Hill*'s work only, and not to his contract. By lord *Mansfield* and the court: This man ſerved 3 years, and received wages accordingly. But it is objected, that he was never hired at all. It is admitted, that if he was hired at all, it would by law be a hiring for a year. And upon the ſtate of this converſation, it is a clear hiring; for *Hill* was a hired ſervant. And therefore it was adjudged,

adjudged, that the pauper thereby gained a ſettlement. *Burrow's Settl. Caſ.* 502.

M. 10 *G.* 3. *Bedfield* and *Dedham.* The pauper *Samuel Bolton* was hired to *John Maſon* of *Dedham*, to ſerve him in the buſineſs of a plumber and glazier, at the *wages of ſix ſhillings a week, board, lodging, and waſhing, ſummer and winter.* He ſerved under that agreement for eleven months; when his maſter, having taken an apprentice, informed him, that he muſt lodge out of his houſe. Upon which, the pauper demanded 6 d a week more; alledging, that he would otherwiſe quit the ſervice. He continued to receive the additional 6 d a week till after the expiration of the year. And the pauper, by the aforeſaid hiring, apprehended he was bound to ſtay with his maſter a year.——It was objected, that here is nothing ſtated that imports a contract for a year; and conſequently, the pauper was bound to ſerve a year, whatever he himſelf might apprehend concerning it.——Unto which it was anſwered, that a general hiring is a hiring for a year. The mention of 6 s a week is only to aſcertain the rate of the wages, but doth not mean to conſider the ſervice as a weekly ſervice; and as the wages in this trade are higher in winter than in ſummer, the words *ſummer and winter* ſhew that this was intended to be a continued contract for both thoſe ſeaſons; and that by fixing the wages to be the ſame in both, it was underſtood by both parties to be a contract for the whole year. But it is, at leaſt, an indefinite contract; and an indefinite contract is a contract for a year.—By lord *Mansfield* and the court: There muſt be a hiring for a year; either in law, or in expreſs words. The words do not expreſs it: And here is a circumſtance ſtated, which deſtroys the preſumption of its being a general hiring for a year; namely, that the ſervant demanded an additional ſixpence a week, alledging that he would otherwiſe quit the ſervice; and the maſter's complying with this demand ſhews that neither of them at that time thought the contract originally made between them was binding for a year. *Burrow's Set. Caſ.* 653.

M. 14 *G.* 3. *Baſingſtoke* and *Stockbridge.* The pauper *Aaron Alexander* was hired to one *Michael Nicholas* of the pariſh of *Wanſton*, to ſerve him as a boot ketcher, and occaſionally as a poſt chaiſe driver, no term for which he was to ſerve being mentioned. He went accordingly into the ſervice, and continued in it for one year; and was, during that time, found by his maſter in meat, drink, and lodging there, but received no wages for ſuch ſervice. He was afterwards hired to *John Watts* of *Baſingſtoke* to be a chaiſe driver,

driver, but no term was mentioned: He ſerved him for a year there; being found by him in meat, drink, and lodging, but received no wages. He thought himſelf at liberty to leave either of theſe maſters whenever he pleaſed. And ſeveral witneſſes proved that the cuſtomary manner of engaging chaiſe drivers is as the pauper depoſed, and that the maſters and drivers think themſelves at liberty to part whenever they pleaſe.——Lord *Mansfield* was abſent. The other three judges were of opinion, that this was a ſufficient hiring for a year. A general indefinite hiring is a hiring for a year, unleſs ſomething appears that may raiſe a preſumption to the contrary. And nothing is here ſtated, which limits the hiring, or ſhews that it was meant to be for leſs than a year. *Bur. Sett. Caſ.* 759.

M. 16 *G.* 3. *Mangotsfield* and *Bath Eaſton*. The pauper was hired to *John Giles* a barber in the pariſh of *St. John* in the town of *Devizes*, to ſerve him as a journeyman barber; who was to give him meat, drink, and lodging; but in lieu of wages, he was to have the *Chriſtmaſs*-boxes; but no time was ſtipulated during which he ſhould ſerve. And upon theſe terms he lived with him for four years; but thought himſelf at liberty to leave his maſter when he thought proper. Afterwards he was hired to *John Bedford*, an innkeeper at *Mangotsfield*, to ſerve him in his ſtable; who was to find him meat, drink, waſhing, and lodging, but no wages other than what he ſhould receive as perquiſites of the ſtable; and no time was ſtipulated during which he ſhould ſerve: And he apprehended, that his maſter might have turned him off, or he might have gone away from him, at their pleaſure. From the time that the pauper began to ſerve the ſaid *John Bedford* to the time at which he left him, was ſixteen years. During which time, he left the ſaid *John Bedford* ſeveral times at his pleaſure. But from the time of his firſt going into the ſervice, he was with the ſaid *John Bedford* two years and upwards without leaving him at all; and at the end of the ſaid term of ſixteen years, he was with him for three years together without interruption.——The counſel who were to have argued this to be no ſettlement at *Mangotsfield*, gave up the point as inſupportable. *Bur. Set. Caſ.* 823.

M. 16 *G.* 3. *Cavendiſh* and *Clare*. The pauper, being a journeyman miller, at *Michaelmaſs* 1768, let himſelf to *Elizabeth Stammers* of *Clare* by the month, at the wages of 8 s a month, and was at liberty to depart from his ſaid ſervice at a month's wages or a month's warning. And at the time of hiring it was agreed between the pauper and the

the ſaid *Elizabeth Stammers*, that if he continued in her ſervice till harveſt time, he ſhould be at liberty, during the harveſt month, to let himſelf to any other perſon for the harveſt month. He continued five years in the ſervice of the ſaid *Elizabeth Stammers*, and during that time conſtantly let himſelf to ſome perſon or other for the harveſt, and received the common wages of 8 s from his ſaid miſtreſs for the harveſt month in each year; and paid her one moiety of the wages earned at ſuch harveſt, annually, and during his ſervice with his ſaid miſtreſs; but generally at the end of every month, and ſometimes weekly, received his wages of 8 s a month, or in that proportion. And he conſidered himſelf as a monthly ſervant, and at liberty to leave his miſtreſs at the end of any month, on payment of a month's wages, or giving a month's warning, according to the firſt agreement. This point was given up by the counſel as indefenſible; the ſaid hiring being only a hiring by the month. *Bur. Set. Caſ.* 819.

(3) *M.* 25 *G* 2. *Ilam* and *Tutbury*. *Rowe Port* of the parish of *Ilam*, eſquire, hearing that the pauper was a likely boy to ſerve him as his poſtilion, ſent to the pauper's father to have him upon liking. After the pauper had ſerved Mr. *Port* 8 weeks on liking, Mr. *Port* hired him for a year to commence from the beginning of the ſaid 8 weeks. He ſerved Mr. *Port* in the ſaid pariſh of *Ilam* a year (including the 8 weeks) and ten days and no longer. By *Lee* Ch. J. This caſe differs from all the former caſes. In *Lidney* and *Stroude*, the firſt hiring was conditional, for a quarter of a year upon liking; and if they did like each other, then to continue for a year: Yet it was holden a good ſettlement, as they did like each other; and the year's ſervice was performed. In *New Windſor* and *Chepping Wycomb*, it was uncertain till the end of the year, whether the hiring would be for a year, yet happening ſo in event, it was held good. In the preſent caſe, the commencement of the hiring was 8 weeks after the boy had been upon liking, with a retroſpect to his firſt coming into the ſervice. Now a man cannot ſerve from a day paſt. Mr. juſtice *Foſter* thought the caſes of *Lidney* and *Stroude*, and of *Chepping Wycomb* and *New Windſor*, had carried the matter as far as poſſible; and if they were new queſtions, he ſhould doubt of thoſe reſolutions: But both theſe were hirings for a year, previous to the ſervice; and the conditions were performed. He obſerved alſo, that the ſafeſt way is to adhere ſtrictly to the words of the act of parliament; for refinements upon theſe queſtions have produced infinity of queſtions

Hiring for a year, part of which was then paſt.

and difficulties. And the court were of opinion that the pauper by virtue of this hiring gained no ſettlement in *Ilam*. Burrow's Settl. Caſ. 304.

Hiring for eleven months.

(4) *T.* 3 *G. Ranton* and *Haughton*. Order ſpecially ſtated: *John Evans* was hired with *Ralph Trubſhaw* of *Haughton* from *Aſh-Wedneſday* till *Chriſtmas*, and ſerved him that time. Then he went away from him, and ſtaid with his father in *Ranton*, for about a week. Then he returned to the ſaid *Ralph Trubſhaw*, and was again hired with him for 11 months, and ſerved him the ſaid 11 months: Then departed from the ſaid *Ralph Trubſhaw*, and took his cloaths with him, and was abſent one week. Then he returned to the ſaid *Ralph Trubſhaw*, and was hired with him for 11 months, and accordingly ſerved him; and then left that ſervice, and went to his father in *Ranton*, and ſtaid about one week. Then the ſaid *John Evans* ſerved one *John Sutton* of *Haughton* aforeſaid for about three weeks; then returned to *Ranton* aforeſaid, and ſtaid for about a week: and then returned to the ſaid *John Sutton*, and hired with him for 11 months, and ſerved within a fortnight or 3 weeks of the laſt 11 months; where, by agreement with the ſaid *John Sutton*, to avoid a ſettlement in the pariſh of *Haughton* aforeſaid, he left him, took his cloaths, and went into the pariſh of *Gnoſall*, and there continued about a week; then returned to the ſaid *John Sutton*, and continued with him ſo long as to make up his ſervice of the laſt 11 months; and 3 weeks before *Chriſtmas*, the ſaid *John Evans* hired himſelf again to the ſaid *John Sutton*, for another 11 months, and ſerved him from that time till within 3 weeks of *Michaelmas* following, and then came away and married. The queſtion was, Whether theſe ſeveral hirings were ſufficient to gain a ſettlement in the pariſh of *Haughton*? *Parker* Ch. J. ſaid, this was an apparent fraud, and different from all the other caſes. *Pratt* J. ſaid, I doubt we muſt take the law to be, that there muſt be a hiring for a year, and a ſervice for a year: Here the ſeſſions have found it ſpecially, and there is neither hiring nor ſervice for a year: And ſuppoſe a man that lives in a pariſh incumbered with poor, hires a ſervant for 11 months only, purpoſely, by way of caution, to prevent a charge upon the pariſh, the intent is lawful, and how can ſuch hiring and ſervice gain a ſettlement? And as to the matter of fraud, if there is any, the juſtices of the peace are judges of that. *Eyre* J. was of the ſame opinion of *Pratt* J. (*Powis* J. being abſent). Afterwards, in *Eaſter* term, after long debate and conſideration, the opinion of all the court was, that theſe hirings

hirings and ſervice in the pariſh of *Haughton* were not ſufficient to gain a ſettlement: and though ſuch hirings as in this caſe do defeat ſettlements, yet if that is a miſchief, it is to be remedied by the legiſlature, and not by the court, which is to judge on the law as it ſtands. *Fol.* 137. *Str.* 83. 10 *Mod.* 392.

T. 30 & 31 *G.* 2. *Milwich* and *Creyton*. *Thomas Thacker* was hired at *Milwich* for 11 months for 4l 10s; and it was agreed between him and the maſter, that he ſhould give in a month's ſervice, beyond the 11 months. He ſerved the 11 months, and alſo the given-in month, except the laſt 3 days, and he could not ſay whether he ſerved them or not; but he received the whole 4l 10s wages. It was moved to quaſh theſe orders; becauſe this was not a hiring for a year, being only for 11 months; nor a ſervice for a year, becauſe 3 days are wanting at the end of it. But the court were very clear, that this agreement is a manifeſt contract to ſerve for a year, notwithſtanding the form of expreſſion; (which by the way they conſidered as an attempt to prevent the man's gaining a ſettlement, by a very paltry evaſion.) The real queſtion is no more than whether 11 and one make 12. There are no particular technical words neceſſary, to make a hiring for a year. The ſubſtance of this agreement is, to ſerve 12 months, for 4l 10s. And what ſignifies the variation of expreſſion? Every contract to ſerve, is a contract to ſerve for a year, unleſs there be ſomething to explain it otherwiſe; and certainly there is nothing here to explain it otherwiſe. And no action could have laid for the wages, till the end of the whole 12 months. And as to the ſervant's going away three days before the end of the year, the ſtate of the fact doth not ſupport the objection. He could not ſay, whether he did or not. But he received the whole 4l 10s wages; which at leaſt ſeems to imply the maſter's conſent or permiſſion. *Burrow's Settl. Caſ.* 433.

(5) *H.* 31 *G.* 2. *Biſhop's Hatfield* and *Saundridge*. A man was hired from *Michaelmas* to *Michaelmas*, for 5l wages, with liberty to let himſelf for the harveſt month, to any other perſon. He ſerved till the harveſt month, and then hired for that month, and received wages for it. During that month, he brewed for his maſter, and lodged in his maſter's houſe at *Saundridge* during the whole year; and ſerved out the remainder of his time, and received his 5l wages. By the court: This is in effect only hiring for 11 months; and the harveſt month is the principal month of the year. It is ſafeſt to keep to the ſtatute. If we

Hiring for a year with liberty to be abſent upon particular occaſions.

allow this, we ſhall not know where to ſtop. *Burrow's Settl. Caſ.* 439.

T. 13 *G.* 3. *Old Sodbury* and *Weſterleigh.* The pauper *William Ayliff* was hired for a year to *Anne Tyler* of *Old Sodbury* to ſerve her for a year, but at the ſame time he told her, that he was in the militia, and he might be abſent about a month in the year to attend on that duty, but that he would pay a man to ſerve in his place, or elſe he would make her an allowance out of his wages for the time he ſhould be abſent. He entred accordingly on his ſaid ſervice with the ſaid *Anne Tyler*, and ſerved her till the month of *May* following, and then joined and attended the militia for thirty days, and afterwards returned to his ſaid ſervice with *Anne Tyler*, and continued therein until the end of his year, and then made her an abatement of 8s out of his wages for the time he was abſent out of his ſervice.——It was argued, that this gained no ſettlement, becauſe here was no hiring for a year. It is true indeed, that the words are, to ſerve her for a year; but a hiring for a year, with liberty to be abſent for a month, is really only a hiring for eleven months; and when a part of the year is excepted out of the original contract, no ſettlement can be gained. Now here it was ſtipulated at the time of the hiring; it was part of the original contract, that he might be abſent about a month in the year. In ſupport whereof was cited the caſe of *Biſhop's Hatfield*, where liberty for the ſervant to let himſelf to any other perſon during the harveſt month was holden to make it no hiring by the year.——Unto which it was anſwered, that this was a good hiring for a year. It is poſitively ſtated, that he was hired to *Anne Tyler* for a year, to ſerve her that year. And what follows is not repugnant to this poſitive ſtate of the fact: It amounts only to an agreement to diſpenſe with his perſonal ſervice for about a month, upon the the terms he propoſed in caſe ſuch an event ſhould happen. The caſe of *Biſhop's Hatfield* was a hiring from *Michaelmas* to *Michaelmas*, with liberty to let himſelf for the harveſt month to any other perſon: which was, undoubtedly, only a hiring for eleven months, and no relation at all ſubſiſted between the maſter and ſervant during the harveſt month. Whereas, here, it was contingent, and the man was to ſerve the whole year if the contingency did not happen. And he actually did ſerve the whole year, except theſe thirty days, and made a proportionable abatement out of his wages. Here was an alternative: It might have happened that he had not been called out to ſerve in the militia within the compaſs of his year.—Lord *Manſfield* was not in court. Mr. juſtice *Aſton* thought this caſe diſ-

diſtinguiſhable from that of *Biſhop's Hatfield:* That abſence for a particular time, with the maſter's leave, not agreed for at the time of hiring, doth not diſſolve the contract: But in the caſe of *Biſhop's Hatfield* the *original hiring* was with liberty to let himſelf for the harveſt month to any other perſon. This made a clear chaſm in the original contract. It was plainly a hiring for leſs than a year. In the preſent caſe a man is hired for a year, to ſerve for a year, but mentions an event that might happen of his being called out to attend his militia duty: And told his miſtreſs, that if it ſhould ſo happen, he would either pay a man to ſerve in his place, or make her an allowance out of his wages. This is not a chaſm in the contract, but a diſpenſation with the preſent ſervice.——Mr. juſtice *Willes* premiſed, that ſettlements ought to be favoured; and that militia men ought not to have any additional hardſhip put upon them, if it can be avoided. However he could not help thinking, that the caſe of *Biſhop's Hatfield* was very like the preſent caſe, and that the abſence was as much part of the contract, in the one caſe as in the other. If the miſtreſs did not expreſsly agree to it, ſhe at leaſt acquieſced. Indeed, in the preſent caſe the ſervant agreed, either to find a ſubſtitute, or to abate out of his wages. Now this was at the election of the miſtreſs: And ſhe diſpenſed with his abſence, upon an abatement out of his wages. Upon this diſtinction, and this only, I would, for the advancement of ſettlements, diſtinguiſh this caſe from that of *Biſhop's Hatfield.*—Mr. juſtice *Aſhurſt* ſaid, that in a caſe which might affect a vaſt number of militia men, he was for leaning in favour of their gaining ſettlements. And he thought this caſe to be diſtinguiſhable from that of *Biſhop's Hatfield.* That caſe was certainly no more than a hiring for eleven months. But here was an alternative; it might happen, that the ſervant ſhould not be called out. Therefore he concurred in ſupporting the ſettlement. *Burrow's Settl. Caſ.* 753.

E. 20 *G.* 3. *Winchcomb* and *Chipping Norton.* The pauper hired himſelf in the pariſh of *Chipping Norton*, five weeks before *Michaelmas*, for a year; and at the time of the hiring, it was agreed between him and his maſter, that his wages ſhould be paid weekly, at 8 s a week, and that, being a balloted man in the militia, he ſhould be abſent for the month, and in lieu of that month ſhould ſerve another month at the end of the year. He was accordingly abſent thirty days in the militia, and then returned to his ſervice, but he only continued three weeks of the month which was agreed to be ſerved in lieu of his

abſence in the militia, leaving his maſter a fortnight before *Michaelmas*. He expreſsly ſwore, that he did not ſerve his maſter a year by one week. It was objected, that this was no hiring for a year, nor any ſervice for a year, at *Chipping Norton*. The exception was part of the original contract. There was to be an interval, and then the pauper was to come and ſerve in the enſuing month, as much more as, pieced to the former ſervice, would make up a year. But a hiring under the ſtatute muſt be for a whole year, without any interruption foreſeen and ſtipulated for at the time of the agreement.——By lord *Mansfield* and the reſt of the court: There is in this caſe a hiring for a year; and there is alſo a ſervice for a year, if it were not for the month's abſence in the militia. A ſervice muſt be for a continuation, without interruption, or adding together broken pieces to make up the year. But here, the agreement, as to the abſence for a month in the militia, was only what would have been implied, and what the maſter muſt have conſented to. The year was compleated five weeks before *Michaelmas*, and the additional month agreed for was only in the nature of a compenſation for the want of the pauper's ſervice while abſent in the militia, and equivalent to a deduction of ſo much wages. The court ought to lean in favour of ſettlements, and the bad conſequences would be very extenſive, if we were to determine that a man ſhould loſe his ſettlement by ſerving his country in the militia. We are all of opinion, that this is a good ſettlement at *Chipping Norton*. *Douglas*. 376.

M. 15 *G.* 3. *Fleckney* and *Empingham*. The pauper *Joſeph Langton*, ſome little time before *Harborough* fair, hired to *Henry Hubbard* of *Fleckney*, from that *Harborough* fair to the *Harborough* fair next following, being one year, at the wages of 3l, ſubject to a liberty of being abſent eleven or twelve days in the ſheep-ſhearing ſeaſon, and to have the benefit of what he got during that time. He entered upon his ſaid ſervice, and ſerved the ſaid *Henry Hubbard* at *Fleckney* for above three quarters of the year. He went to ſhear ſheep, in the ſeaſon, for about eleven days, and ſerved the ſaid *Henry Hubbard* at *Empingham* the remainder of the year. He received to his own uſe what was paid him for the ſheep-ſhearing, over and beſides his wages of 3l. One day in the ſeaſon, he aſked his maſter's leave to go a ſheep-ſhearing: his maſter ſaid, he was going out, and could not ſpare him that day; and in conſequence thereof he did not go. The pauper, during the ſhearing ſeaſon, returned frequently to his maſter's houſe,

houſe, and did what work was to be done; and his maſter found him his board as often as he returned home. It was argued, that this was not a hiring for a year; for it was part of the contract to except eleven or twelve days out of the year: like as in the caſe of *Biſhop's Hatfield*, where hiring for a year, with liberty to let himſelf for the harveſt month to any other perſon, was holden to be only a hiring for eleven months. Unto which it was anſwered, That this ought not to be conſidered as an exception out of the original contract, but upon the foot of a leave of abſence conſented to by the maſter; like the caſe of the militia man, and not like that of *Biſhop's Hatfield*, nor within any of the caſes which turn upon exceptions out of the original contract.--But the court were unanimouſly of opinion, that this was an exception out of the contract at the time of making it. They held it to be part of the contract, and not to be conſidered upon the foot of leave of abſence given by the maſter; who being bound by the contract, could not refuſe agreeing to it. The militia man's caſe, they ſaid, was a particular caſe: It was no more than the law would have implied. And it was determined that no ſettlement was obtained under this hiring. *Bur. Set. Caſ.* 791.

Hiring from Whitſuntide to Whitſuntide.

(6) *T.* 10 *G.* 3. *Newſtead* and *Holy Iſland*. *Frances Downey* was hired at *Whitſuntide* 1767 to *Thomas Hill* at *Holy Iſland*, to ſerve him for a year from the ſaid *Whitſuntide* to the *Whitſuntide* following, at certain wages. She entred upon the ſaid ſervice accordingly at *Whitſuntide* 1767, and continued therein till *Whitſuntide* 1768, when ſhe received a year's wages from her ſaid maſter for ſuch ſervice. It was further ſtated, that it hath been uſual in that country, to hire ſervants from *Whitſuntide* to *Whitſuntide*: And that an hiring and ſervice from *Whitſuntide* to *Whitſuntide* has always, by the contracting parties, been deemed a year's ſervice; and agreeable thereto, the maſter hath always paid the ſervant a full year's wages for ſuch ſervice, without any diminution thereof or addition thereto, and without making any diſtinction or difference, whether the ſpace of time between the one *Whitſuntide* and the other conſiſted of more or leſs than 365 days. —It was argued, that the ſpace of time between *Whitſuntide* 1767 and *Whitſuntide* 1768, being leſs than a year (by 16 days), no ſettlement was gained at *Holy Iſland* by this hiring and ſervice, being both of them incomplete; and though the court have ſometimes relaxed a little as to the ſervice, yet they never relaxed as to the hiring.——But by the court: There is no caſe that

proves the abſolute neceſſity that the hiring ſhould be for exactly 365 days. It is ſtated to be the uſual way of hiring ſervants in that country, and ſuch ſervice always deemed to be a year's ſervice. Pariſh officers are, by the 43 *Eliz.* to be appointed in *Eaſter* week, or within one month after *Eaſter* (which is a moveable feaſt): Yet they are conſidered as executing the office a whole year, tho' it may fall ſhort of 365 days.——And it was adjudged, that this hiring and ſervice were ſufficient to gain a ſettlement. *Burrow's Settl. Caſ.* 669.

Hiring one or a few days ſhort.

(7) *M.* 1 *G. Peperharrow* and *Frenſham*. A perſon is hired the third of *October*, to ſerve till *Michaelmas* following; and at *Michaelmas* the maſter ſays, ſtay two or three days, and I will pay you. It is ſaid, that this was adjudged to be a ſettlement, becauſe fraudulent; and if this were allowed, there would be no ſuch thing as a ſettlement; for every perſon would hire a ſervant two or three days after the quarter day, purely to evade the ſtatute. *Caſes of Settl.* 80. 10 *Mod.* 293.—But Mr. *Foley*, in reporting this caſe, ſays, that upon conſideration, the court were all of opinion, that this hiring was not ſufficient to gain a ſettlement; for it is not a hiring for a year: And if we once go out of the act, where muſt we ſtop? And in *Str.* 83. this caſe is cited, and it is there ſaid, that this was held to be no ſettlement.

H. 5 *G. Coombe* and *Weſtwoodhay*. *Michaelmas* day was on *Thurſday*; and a perſon was hired upon the *Saturday* following, to ſerve till *Michaelmas:* And it was held to be inſufficient to gain a ſettlement, being not a hiring for a year. *Str.* 143.

T. 3 *G.* 2. *K.* and *Weſtwell*. A man was hired three days after *Michaelmas*, to ſerve till *Michaelmas* following: The juſtices held this to be a good ſettlement; but quaſhed by the court. 1 *Barnardiſt.* 354.

E. 5 *G.* 2. *South Cerney* and *Coultſhourn*. At *Northleach* are annually held two meetings for the hiring of ſervants, the one on the *Wedneſday* before *Michaelmas*, the other on the *Wedneſday* after. The pauper was hired on the *Wedneſday* after *Michaelmas*, to ſerve till *Michaelmas* following; which he did. It was urged, that this being a hiring according to the courſe and cuſtom of the country, was a ſufficient ſettlement. But by the court: This is no ſettlement upon the face of it. There muſt be a hiring for a year, and that cannot be diſpenſed with. 1 *Seſſ. Caſ.* 156.

M. 14 *G.* 2. *Newton* and *Gouldeſborough*, in the Weſt-riding of *Yorkſhire*. *Abraham Greaves* the pauper, on *Wedneſday*

Wedneſday after *Martinmas* day, being the 14th day of *November*, and the day on which the firſt ſtatute fair for the publick hiring of ſervants was held at *Knareſborough* in the ſaid riding, was hired to ſerve from that time till *Martinmas* day following. Which ſervice he performed accordingly. By the court, This was not a hiring for a year, ſo as thereby to gain a ſettlement. *Burrow's Settlem. Caſ.* 157.

M. 13 *G.* 3. *Naveſtock* and *Stondon Maſſey*. Caſe ſpecially ſtated by the ſeſſions, "That *Thomas Fair* the pauper, at "the ſtatute fair at *Ongar* in the county of *Eſſex*, on the "day next after old *Michaelmas* day, to wit, on the 11th "of *October* 1733, hired himſelf to *Samuel Poſsford* of "*Naveſtock* in the ſaid county, to ſerve till the old "*Michaelmas* day following: That he entred upon the "ſaid ſervice, and continued in it until the old *Michaelmas* "day following; on which day he received his wages, and "quitted the ſaid ſervice: It appearing to be according to "the cuſtom and uſage of the country, to hire ſervants at "the ſaid ſtatute fair, namely, the day after old *Michael-*"*mas* day, in the manner this pauper was hired, the "opinion of this court" (*viz.* of ſeſſions) "is, that the "pauper gained a ſettlement in *Naveſtock*, by the hiring "and ſervice above ſtated; ſubject to the opinion of the "court of king's bench, on the queſtion, whether the "hiring as above ſtated is a ſufficient hiring for a year to "give the pauper a ſettlement?" It was argued, that this was no hiring for a year. It is a day ſhort of a year. The acts of parliament poſitively require a hiring for a year, and a ſerving for a year; and the cuſtom and uſage of the country cannot control a poſitive act of parliament.—Unto which it was anſwered, That here appears to be a compleat hiring for a year, and ſervice for a year. But if it ſhould be admitted, that a day was wanting according to abſolute rigid ſtrictneſs of computation, yet the expreſs ſtating it to be according to the cuſtom and uſage of the country made it a ſufficient hiring for a year to give the pauper a ſettlement.——By lord *Mansfield* (unto which the reſt of the court aſſented): There muſt be a hiring for a year. If the hiring be for leſs than a year, it will not do, be the deficiency ever ſo little. Two days or one day ſhort of a year, are equally an objection to its being a hiring for a whole year. Hiring from a moveable feaſt to a moveable feaſt, according to the cuſtom of the country, has been determined to be a hiring for a year. And here they have ſtated the cuſtom and uſage of the country to hire ſervants in the manner this pauper was hired, namely, at the ſtatute

ſtatute fair the day after old *Michaelmas*. If this ſhould be taken not to be a hiring for a year, there can be no ſettlement gained in this country by a ſervant: For all ſervants in this country are hired as the preſent pauper was hired. Therefore it ſeems no ſtretch to conſider this as a hiring from *Michaelmas* to *Michaelmas*. *Burr. Set. Caſ.* 719. *Bott.* 387.

E. 17 *G.* 3. *Milham* and *Syderſtone cum Bermer*. *Charles Dawſon*, being legally ſettled at *Syderſtone*, applied on old *Michaelmas* day to *J. E.* of *Milham*, to be hired by him, but on that day they could not agree about wages; *Dawſon* aſking eight guineas a year, and the other offering only ſix pounds. On which they parted. The next day, *viz. Oct.* 11th, between two and three o'clock in the afternoon, they were together at a public houſe in *Milham*, when *J. E.* aſked him if he would take the wages offered him the day before, which he refuſed; but after ſome converſation *Dawſon* hired himſelf to the ſaid *J. E.* until *Michaelmas* following, at ſeven pounds wages; and entered his ſaid maſter's ſervice on the evening of that ſame day 11th *Oct.* 1771, and ſtaid in his ſervice till 10th *Oct.* following, being *Michaelmas* 1772. On that day, his maſter not having finiſhed his harveſt, aſked *Dawſon* to ſtay and help him with his harveſt; and *Dawſon* thought himſelf at liberty to go away, yet he ſtaid with his ſaid maſter until the next day, to wit, 11th *October* at noon; when, after dinner, he aſked his maſter for his wages, who paid him ſeven pounds; and *Dawſon* quitted his ſervice, but did not aſk or receive any recompence for his additional ſervice. The court were clearly of opinion, that *Dawſon* by this hiring and ſervice gained a ſettlement at *Milham*. M. S.

T. 20 *G.* 3. *Leeds* and *Hanwood*. At *Otley* in the county of *York*, there is a cuſtom for ſervants to hire by the year at two different ſtatute days; one on the *Friday* before old *Martinmas*, and the other on the *Friday* next after old *Martinmas*. At which latter ſtatute day, they always hire till old *Martinmas* day following, which by the cuſtom is conſidered as hiring for a year. Old *Martinmas* day, in 1775, was on a *Tueſday*. On the *Friday* following, being the ſecond ſtatute day, the pauper hired till old *Martinmas* day following, and ſerved that time. It was argued, that this was a good hiring ſo as to gain a ſettlement. And for this was cited the caſe of *Naveſtock*, where a hiring at a ſtatute fair held on the day next after old *Michaelmas* day, to ſerve till the old *Michaelmas* day following, ſuch hiring being ſtated to be according to the cuſtom and uſage of the country was held to be ſufficient.

Unto

Unto which it was anſwered, that it is an eſtabliſhed point, that no hiring which on the face of it appears to be for leſs than a year, is ſufficient for gaining a ſettlement. And in the caſe of *Naveſtock*, as there is no fraction of a day, and as the word *till* might be conſtrued to include the *Michaelmas* day, the hiring was conſidered as for a compleat year.—Lord *Mansfield* was abſent. The other three judges held this not to be a ſufficient hiring for a year. And Mr. juſtice *Buller* ſaid, there is no caſe, where a hiring upon the face of it appears to be for leſs than a year, in which the court has held that a ſettlement was gained: And it would be dangerous to make a new precedent of that ſort.—And the Reporter takes notice of the caſe of *Syderſtone*, and ſays, that in that caſe, a hiring on the 11th of *October* 1771, till old *Michaelmas* day 1772, was held to be a ſufficient hiring, though there was nothing ſtated of any cuſtom or uſage. *Douglas*. 423.

Hiring with one's father.

(8.) *T.* 13 *An. Jeſſop* and *Miſſenden*. *Sarah Barnes* lived with her father for a year as a hired ſervant, in a little cottage upon the waſte, for 10 s a year, beſides what ſhe could get by her ſervice and labour. And whether ſhe gained a ſettlement thereby, was the queſtion. And the whole court held ſhe did; there is no ground of fraud; for it was to live with her father, who might be grown old. *Fol.* 142.

Hiring to be paid according to the work done.

(9.) *T.* 13 & 14 *G.* 2. *King's Norton* and *Camden*. *Mary Calcut* was hired for a year, to ſpin yarn at 18 d a ſtone; and was to provide herſelf with meat, drink, waſhing, and lodging, where ſhe pleaſed. She ſpun for her maſter the whole year, and boarded and lodged at her maſter's, allowing 2 s a week for the ſame: But upon her examination ſhe ſaid, that by her contract ſhe thought herſelf at liberty to play or be abſent from her work as long as ſhe pleaſed, only that ſhe was not at liberty to work for any other maſter. By the court: This caſe hath all the requiſites of the ſtatute, and is a good ſettlement. For in fact here is a hiring and a ſervice for a year. And what her apprehenſion was, or whether ſhe was paid by the year or by the quantity of her work, was immaterial. *Str.* 1139. 2 *Seſſ. Caſ.* 146. *Burrow's Setti. Caſ.* 152.

H. 20 *G.* 3. *K.* and *Bermingham*. The caſe ſpecially ſtated was, That *Thomas Baker* was hired in the pariſh of *Bermingham*, by *John Jennings* a wood ſcrew-maker, for a year, good earn good hire, to work for him and no other maſter, to make ſcrews, at ſo much a groſs; and this was all that paſſed upon the hiring: That perſons are often hired at *Bermingham* under the terms "good earn good

"hire,"

" hire," the meaning of which is, that their pay is to depend upon their work. *Baker* had no wages. He was to have what he got. If he got nothing, he was to have nothing. His maſter had no buſineſs but that of a ſcrew-maker. He was to work in his maſter's ſhop, and do no other work. He ſerved a year under the hiring; and, during the year, ſometimes lodged with his maſter, ſometimes in another houſe in the pariſh; and when he lodged with his maſter, he paid him for his diet and lodging. He ſometimes abſented himſelf, to drink or play, for a week or fortnight, and never aſked his maſter's leave for ſuch abſence. His maſter, on his return, was angry and checked him, but always received him again. During ſuch abſence, he never worked for his maſter or any other perſon. And it is generally underſtood at *Bermingham*, that perſons hired to work in ſhops, under the above terms, may occaſionally abſent themſelves, but cannot work for another maſter.——The court was of opinion, that this was was a good hiring and ſervice, ſo as to gain a ſettlement. *Douglas*. 319.

Hiring to work at certain times only.

(10) *E.* 31 *G.* 2. *Macclesfield* and *Sutton*. *Joſeph Bower*, a baſtard child, born at *Sutton*, and maintained by the overſeers of *Sutton*, was hired, with the conſent and direction of his mother (he being then about eight years of age) to *Macclesfield*, to work at a ſilk mill there, for the term of three years, at 6 d a week for the firſt year, 9 d a week for the ſecond year, and 13 d a week for the third. The maſter was not to find diet or lodging; and the ſervice was to be only 11 hours in the ſix working days; and all the reſt of the time, as well as on *Sundays*, he was to be at his own liberty and his own maſter. He continued three years in the ſaid ſervice; but within that time, frequently abſented himſelf from his work, ſometimes for a whole day, or longer, at other times for ſeveral hours in the day; for all which defaults, deductions were made out of his wages. He lodged the whole three years with his mother at *Macclesfield*; who received his wages; which not being ſufficient to maintain him, the overſeers of *Sutton* contributed 6 d a week, during the whole time towards his maintenance. The queſtion was, whether this was ſufficient to gain a ſettlement at *Macclesfield*? By lord *Mansfield* Ch. J. Here is no foundation to imagine that this can be a ſettlement on the ground of an apprenticeſhip. The only queſtion is, whether it is a ſettlement as a hiring for a year and ſervice for a year? The pauper was an infant of only eight years of age, at the time of the hiring. Therefore he was not bound by the agreement. Indeed he might

might have affirmed it; (for the contract of an infant is not abſolutely void, but only voidable, at his own election:) But the maſter could not oblige him to ſtand to it. Then as to the contract itſelf, it was only to ſerve eleven hours in the day of the ſix working days, but during all the reſt of thoſe days, and the whole *Sunday*, the ſervant was at his own diſpoſal. It is in the nature of a contract from week to week; and it cannot in this caſe be conſtrued to gain a ſettlement; and it is plain the pariſh of *Sutton* did not underſtand it in this light, having contributed to the child's maintenance during the whole three years. And the order adjudging it to be a ſettlement at *Macclesfield* was quaſhed. *Burrow's Settl. Caſ.* 458.

T. 10 *G.* 3. *St. Agnes* and *Redruth*. The father of the pauper contracted with one Mr. *Nankivell* (the pauper being then 15 or 16 years of age) for the pauper to work at the ſaid Mr. *Nankivell*'s ſtamps ſituate in the pariſh of *St. Agnes* (which ſtamps are mills, wherein ſeveral labourers, men and boys, are employed in cleanſing and manufacturing tin), for one year, at the yearly wages of 5 l. In purſuance of which contract, the pauper ſerved the ſaid Mr. *Nankivell*, at his aforeſaid ſtamps, for the ſaid year, by working therein daily, except holidays and *Sundays*, according to the cuſtom of tinners. And his father received his wages, as he had occaſion for it. But during the ſaid year, the ſaid pauper did eat, drink, and lodge with his father in the ſaid pariſh of *St. Agnes*, ſerving the ſaid Mr. *Nankivell* at his ſtamps aforeſaid, and in no other capacity, nor ever became a part of his maſter's family. — It was argued, that the pauper did not hereby gain any ſettlement at *St. Agnes*. That this is rather the caſe of a journeyman, than of a hired ſervant. He was reſident with his father. He was his own maſter, except as to performing the ſtipulated limited ſervice at the ſtamps. He was only to do that particular ſervice. The maſter had no right to employ him in any other. And *Sundays* and holidays were abſolutely his own, without any controul from the maſter. This contract is in effect the ſame as that in the *Macclesfield* caſe was; there, the pauper was to be his own maſter and at his own liberty the whole *Sunday*, and all the reſt of the other days except the eleven hours. —— But by the court: This was an intire contract for a year, without any exception contained in it; and the ſervice was according to the cuſtom of the country. The difference is, where the exception is part of the contract, and where the contract is abſolute. The queſtion turns upon this diſtinction. In the caſe of *Macclesfield*, it was part of the original

original contract: Here, it is not ſo. And they were unanimous, that the pauper by this hiring and ſervice gained a ſettlement. *Bur. Set. Caſ.* 671.

H. 12 *G.* 3. *Buckland Denham* and *Mells.* The pauper, at about 17 years of age, was hired, by his father, to a clothier of *Buckland Denham*, to ſerve him as a ſhearman for five years, and was to work ſhearman's hours only, (which are uncertain:) It was underſtood, that he ſhould be at his own liberty at all other times. The maſter was to teach him the buſineſs of a ſhearman. He was to have, for the firſt half year, the weekly wages of 3 s; and to be advanced 6 d weekly wages, every ſucceeding half year; and was to find himſelf in meat, drink, waſhing, and lodging. He ſerved his maſter, as a ſhearman, during the ſaid term, according to the ſaid agreement; working the ſame hours as his maſter's other ſhearmen did.—— It was argued, that this caſe falls directly within the caſe of *St. Agnes*; and conſequently, that the pauper by this hiring and ſervice gained a ſettlement in *Buckland Denham.* ——On the contrary, it was inſiſted, that this preſent caſe differs eſſentially from that of *St. Agnes.* In the caſe of *St. Agnes*, there was a hiring for a year, and no exception in the original contract, of holidays and *Sundays.* But here the exception was in the original contract. And this is the point on which the diſtinction turns.—— And by the court: This is not a good hiring for a year; becauſe there is an exception in it, that the pauper was to work ſhearmens hours only, and to be at his own liberty at all other times. But if the contract be an abſolute contract for a year; the not working on *Sundays* or holidays, if it be the cuſtom of the country not to work on thoſe days, ought not to hinder the gaining of a ſettlement. *Burrow's Set. Caſ.* 694.

Hiring conditionally.

(11) *T.* 6 & 7 *G.* 2. *Lidney* and *Stroude. Martha Brewer* was hired to *William Wake* in the pariſh of *Stroude*, for a quarter of a year; and if her maſter and ſhe liked one another, ſhe was to continue for a year, and to have 3 l for her year's wages. She entred into the ſaid ſervice, and continued therein one whole year, and received the ſaid wages of 3 l. It was argued, that as it was in the election of either party, during the firſt quarter, whether ſhe ſhould continue or not, ſhe conſequently could not be originally hired for a year. But the court held this conditional hiring to be a good hiring for a year; ſince the maſter and ſhe did like one another, and a year's ſervice was actually performed under it. *Burrow's Settl. Caſ.* 1.

H. 8 *G.* 2. *New Windſor* and *Chepping Wycomb. Diana Brooks* was hired to colonel *Meyrick* at *Thorpe*; and was to go into her ſervice a month upon liking; and was to have 5*l* a year wages; but was to go away from her ſaid ſervice on a month's wages or a month's warning on either ſide. She continued near two years in her ſaid ſervice, without any other hiring; and received her wages quarterly. This, by the unanimous opinion of the court, is a hiring for a year at *Thorpe:* And ſhe gained a ſettlement there. *Burrow's Settl. Caſ.* 19.

H. 16 *G.* 2. *Atherton* and *Barton. Ralph Harriſon* was hired for a year to *Thomas Barlow* of *Barton*, at 4*l* wages, payable quarterly. And it was agreed between them, at the time of the hiring, that either of them ſhould be at liberty to determine the contract, at the end of any quarter of the ſaid year, on a month's notice. But no ſuch notice was ever given by either; and the ſervant continued in his ſaid maſter's ſervice in *Barton* the whole year. The ſervant declared at the time of the hiring, that the reaſon of the ſaid hiring being made determinable at the end of every quarter upon ſuch notice as aforeſaid, was, that he would not be hired ſo as to loſe his former ſettlement. But by the court unanimouſly and clearly: This is a good ſettlement in *Barton*. Burrow's Settl. Caſ. 203.

H. 22 *G.* 2. *St. Ebbs* and *Holywell.* Two juſtices remove *Caleb Guy* from *Holywell* to *St. Ebbs*. And the ſeſſions upon appeal confirm that order. The caſe was, the ſaid *Caleb Guy* was hired to *Thomas White* of *Holywell* thus: He was to come for a quarter of a year, and to have after the rate of 20*s* a year; and if he and his maſter liked each other, he was to continue. He did continue a year and a half above the ſaid quarter, without any further or other hiring, and received his wages as he had occaſion for them. It was moved to quaſh theſe orders, for that the ſettlement was in *Holywell*, by this hiring and ſervice: For a conditional hiring is a hiring for a year, provided the condition be performed. And a rule was made to ſhew cauſe. But no cauſe was ſhewed. And the rule was made abſolute. *Burrow's Settl. Caſ.* 289.

T. 24 & 25 *G.* 2. *Ozelworth* and *Wotton under Edge. William Hewett*, ſettled in *Ozelworth*, agreed with *Thomas Palſor* of *Wotton under Edge*, cloth-worker, to ſerve him in the ſaid buſineſs for three years, at ſo much a week. He was to work 12 hours in a day; and if more, was to have a penny for each hour over. Sixpence a week was to be retained as a depoſit; which was to be repaid to *Hewet* if he performed the agreement, or if *Palſor* ſhould diſcharge him

him before the end of three years; but to be kept by *Palſor*, if *Hewett* ſhould quit the ſaid ſervice before the end of the ſaid term. And it was underſtood between them, that *Palſor* might turn *Hewett* out of his ſervice at any time during the term, paying him the ſixpences detained. *Hewett* worked under the agreement for about ſix months; and then, being ill, abſented himſelf about three months; and then returned, and was received by *Palſor*, and continued to work for him under the ſaid agreement, till the time of his being removed by the order, being for about three quarters of a year after his return. During the whole time, *Hewett* lodged in the pariſh of *Wotton under Edge*, but not in *Palſor*'s houſe. By the court: This is a ſettlement at *Wotton under Edge*. Here is an actual hiring for three years, and a ſervice under it for one year and a quarter. Beſides, the two juſtices removed him whilſt he was actually in his maſter's ſervice. *Burrow's Settl. Caſ.* 302.

Hiring by implication.

(12) *E.* 13 *G.* 2. *Wandſworth* and *Putney*. A boy came to live with Mr. *Falkner*, without any hiring; and then his maſter told him, that if he ſtaid a year and behaved well, he would give him a livery and wages the next year. He lived there one year and four months, and received a guinea and a half wages. The court inclined to think, that this was a conditional hiring, and that the boy's ſervice was an aſſent in fact, and that it gained a ſettlement; but referred the matter back to the ſeſſions to be more fully ſtated. 2 *Seſſ. C.* 188.

Service where no contract did appear.

(13) *M.* 13 *G.* *Gregory Stoke* and *Pitminſter*. A young woman lived with her grandmother for four years, on an allowance of meat, drink, waſhing, and lodging. But there appearing no contract betwixt the grandmother and the girl, but that ſhe might have left her grandmother at any time, it was adjudged not a hiring within the ſtatute. 2 *Seſſ. C.* 120.

H. 33 *G.* 2. *Corſe Caſtle* and *Weyhill*. Order ſpecially ſtated, That it appeared on the evidence of the pauper (the only witneſs produced on either ſide) that about the year 1719, one *Robert Pyke*, eſquire, took the pauper (being then about 8 years of age) into his family, from charity, and gave him meat, drink, lodging, and cloaths, while he continued with him, which was about ſix years, of which the four laſt years were in the pariſh of *Weyhill*. That neither at nor before the time of the ſaid Mr. *Pyke*'s taking the pauper into his family, nor at any time after, was there any contract between the ſaid parties, in relation to the pauper's ſervice of the ſaid Mr. *Pyke* or his continuance

tinuance with him, or to any wages or other gratuity to be paid him for the ſame. That during his continuance with the ſaid Mr. *Pyke*, he was employed in running of errands, and doing whatſoever the ſaid Mr. *Pyke* or his ſervants thought fit to bid him. That no wages were ever paid or given to him. And that in the pauper's apprehenſion, he was, during all the time aforeſaid, at liberty to quit the ſaid Mr. *Pyke*, or the ſaid Mr. *Pyke* to turn him off, as either party ſhould think fit.—The ſeſſions were of opinion, that at this diſtance of time, a hiring for a year, between the ſaid Mr. *Pyke* and the pauper or his father ought to be preſumed; and therefore they confirm the order of the two juſtices for ſending him to *Weyhill*. —It was urged, in ſupport of the orders, that upon a regular ſervice for above a year, a hiring ſhall be preſumed; that wages are not neceſſary; that the pauper's apprehenſion doth not vary the caſe; that the witneſs ſpeaks to a tranſaction when he was but eight years of age; and he might have been hired out by his father, though not by himſelf.——But by the court; It is clear here was no hiring at all, no contract, but he was taken out of charity, a child of eight years of age, to run on errands, and do whatever he was bid, and left Mr. *Pyke* when he came of 14 years of age, and was capable of doing more ſervice. And it is expreſsly ſtated, that there was no contract. Indeed, where there is a hiring ſtated, the court will preſume it to have been a regular one, unleſs the contrary appears; and that was the caſe of *Crediton* and *Wincaunton*, *H.* 24 *G.* 2. A general hiring was there ſtated; but here was no hiring at all.——And both the orders were quaſhed. *Burrow's Settl. Caſ.* 491.

M. 4 *G.* 3. *St. Peter*'s and *Holy Trinity* in *Dorcheſter*, The pauper *John Millwood* made an agreement with his ſtepfather, to live with his ſtepfather in his houſe, to work with him at his trade of a button-maker, and to be paid at the rate of one penny for every groſs of buttons he ſhould make, deducting at the rate of 5s a week for his meat, drink, waſhing, and lodging. Under this agreement he lived with him four or five years in the pariſh of *Holy Trinity*. It was urged, that this was a hiring for a year by implication; for an indefinite hiring is a hiring for a year. By lord *Mansfield:* This is the caſe of a workman hired to work by the piece. It is not like any of the caſes where there was a hiring for a year. Indeed hiring in general and indefinitely gives a preſumption of a hiring for a year, where the nature of the ſervice and ſubſequent facts concur to render it probable that it was ſo

meant. But the nature of the preſent ſervice is quite otherwiſe. It is very clear in this caſe, that there was no hiring for a year, expreſs or implied. *Burrow's Settl. Caſ.* 513. *Black. Rep.* 443.

What ſhall be deemed a ſervice for a year.

Unleſs ſuch perſon ſhall continue and abide in the ſame ſervice] What ſhall be deemed the *ſame ſervice* within the meaning of this explanatory ſtatute, hath been much controverted. Concerning which there have been the following reſolutions:

Hiring for a year, and ſervice for a year, but not under the ſame hiring.

(1) In the caſe of *Dunsford* and *Ridgwick*, *M.* 9 *An.* Mr. *Foley* ſays, the court declared, that there ought to be one intire contract, and one intire ſervice for a year, purſuant to that contract. *Foley* 133. And Mr. *Blackerby*, in reciting that caſe, ſays, it was then held, that there muſt be one intire hiring, and one intire ſervice in purſuance of ſuch hiring, for a whole year, that muſt make a ſettlement. *Black.* 244. ——But it muſt be obſerved, that this was not properly the point in queſtion. For the queſtion there was, whether a hiring for two half years ſhould be deemed a ſufficient hiring, and not what ſhould be ſufficient ſervice under ſuch hiring?

We proceed therefore to the caſe of the inhabitants of *South Moulton*, *H.* 10 *W.* A maid ſervant was hired for half a year; which time ſhe ſerved: And then was hired for a year, and ſerved half of that. *Rokeby*, *Turton*, and *Gould* (*Holt* Ch. J. being abſent) held it to be a ſettlement; becauſe the ſtatute deſigned only that the party ſhould ſerve a year. *L. Raym.* 426.

Another caſe in the ſame term was that of *Overton* and *Steventon*, which was thus: *Bridget Bayly*, before the 25th day of *March* 1697, was a ſettled inhabitant in the pariſh of *Overton*; and on or about the ſaid 25th day of *March*, ſhe contracted with one *John Orpwood* of *Steventon*, for the wages of 20s, to ſerve him from the ſaid 25th day of *March* 1697, till *Michaelmas* then next following; which time ſhe ſerved accordingly. And at the ſaid *Michaelmas*, the ſaid *Orpwood* contracted with the ſaid *Bridget*, from the ſaid *Michaelmas* for one year enſuing, for the wages of 30s. And the ſaid *Bridget*, according to the laſt-mentioned contract, remained with the ſaid *Orpwood*, till ſome time in the month of *April* 1698; in which month, by the mutual conſent of the ſaid *Bridget* and *Orpwood*, ſhe left her ſervice, and he paid her the proportion of wages then due. The ſeſſions thinking the above-mentioned hiring and ſervice aforeſaid, continuing for the time of more than one whole year, to be a good ſettlement, confirmed the order

order of the two juſtices for ſending her to *Steventon*.—— And of this opinion was the court: And the orders were confirmed. *Burrow's Settl. Caſ.* 549.

E. 1 *G. Brightwell* and *Weſthallam*. There was a hiring and ſervice from three weeks after *Michaelmas* to *Michaelmas*, and then a hiring for a year, and ſervice for 11 months. The Ch. J. ſaid, If there was a ſervice for a year, on a hiring from week to week, and then a hiring for a year, and ſerving for forty days, that he ſhould adjudge that a ſettlement. The reaſon is, becauſe till the laſt ſtatute was made, a hiring for a year, and forty days ſervice, made a ſettlement; in regard that the hiring for a year ſhewed that the perſon was not likely to become chargeable, for that he was able to work. So forty days is a good ſettlement to an apprentice, in reſpect to his ſkill and art, by which he is ſuppoſed unlikely to become chargeable. So a perſon that has paid pariſh dues, or ſerved offices in a pariſh, gains a ſettlement by forty days, becauſe he is ſuppoſed a perſon of ſubſtance, unlikely to become chargeable. But the late act requiring ſervice for a year, as well as an hiring, we think it ſufficient if the words be anſwered, conſidering this with the deſign of the former ſtatutes. 1 *Seſſ. C.* 87. *Foley.* 143.

M. 1 *G.* 2. *K.* and *Aynhoe*. The pauper was hired in *Biceſter* from *Chriſtmas* to *Michaelmas*, and ſerved till *Michaelmas*; then was hired for a year, and ſerved till *Midſummer*. And this was adjudged to gain a ſettlement in *Biceſter*. There were cited for it, the caſes of *Overton* and *Steventon*, and of *Brightwell* and *Weſthallam*. Lord Ch. J. *Raymond* ſaid, the caſe of *Weſthallam* was expreſs to the point, and he would not break into it; but if it had been *res integra*, or a caſe not adjudged before, he ſhould have thought it ill. Here the ſervice was made previous to the hiring for a year. The greater part of the judges thought this caſe to be againſt the ſtatute, but that they were more ſtrongly bound by the precedent; and were unwilling to ſet aſide a reſolution ſolemnly adjudged, tho' not according to their own opinion. 2 *Seſſ. C.* 119. *Fol.* 144.

M. 11 *G.* 2. *Fifehead Magdalen* and *Weſt Stower*. *William Trim* hired himſelf to a maſter at *Weſt Stower*, from *Midſummer* to *Lady-day*, being three quarters of a year, for 40s. At *Lady-day*, he received his wages of 40s, and left his maſter's ſervice, and then went to his father's houſe in *Weſt Stower*; and in about an hour returned to his maſter, and agreed with him for a year, at 31 10s a year, and lived with his maſter half a year, in purſuance

of the ſecond agreement. When he went from his maſter's houſe, he had no cloaths but what he wore, except a ſhirt, which he left at his maſter's houſe. It was urged, that this was no ſettlement, for that there ſhould be firſt a hiring for a year, and then a ſervice for a year under that hiring: Beſides, here was a diſcontinuance; the firſt contract was at an end, before the ſecond contract was entered upon; ſo that it was not a continuing in the ſame ſervice. Lord chief juſtice *Lee* ſaid, he remembered the reſolution was firſt come into in lord chief juſtice *Parker*'s time, that a hiring for a year and a ſervice for a year were ſufficient to gain a ſettlement, though all the ſervice ſhould not be under the ſame contract; and that Sir *Thomas Powys* (who was juſt come into the court) very much boggled at it: But now, he added, the rule is eſtabliſhed, that if there is a hiring for a year, and a ſervice for a year, it will gain a ſettlement, though the whole ſervice is not under the firſt hiring. And in this caſe, the abſence for an hour, which was only to conſult his father about a new contract, ought not to be looked upon as a diſcontinuance. Upon every new contract, there is a ſort of diſcontinuance. The laſt day of the former contract was the firſt day of the ſecond ſervice. And this was only an hour's abſence within the ſpace of that ſame day. Therefore he remained a ſervant during the whole time of the completion of his year. *Burrow's Settl. Caſ.* 116.

M. 19 *G.* 2. *Croſcombe* and *St. Cuthbert*'s. Two juſtices made an order to remove *Joſeph Garnſey* from *Croſcombe* to *St. Cuthbert*'s. Upon appeal, the ſeſſions quaſhed that order, and ſtate ſpecially, that *Joſeph Garnſey* the pauper hired himſelf for a year to Dr. *Lucy*, and lived a year with him in *St. Andrew*'s, and had his wages and livery; and without coming to any new agreement, continued with him a quarter of a year longer. Then the maſter removed, with his family (*Joſeph Garnſey* being one) to *St. Cuthbert*'s, where the ſaid *Joſeph Garnſey* continued to live with him about ſix months, ſtill under the firſt contract. It was moved, to quaſh the order of ſeſſions, for that they were miſtaken in point of law; the ſervice in *St. Cuthbert*'s being a continuance of the firſt contract, and under it, for the ſaid ſix months: The ſervant's laſt legal ſettlement muſt therefore be in *St. Cuthbert*'s, where he ſerved the laſt ſix months. On the other ſide it was urged, that this was not the ſame ſervice as the firſt year's was; for that the firſt contract was completed and

and executed on both ſides, and was determined. It had gained the ſervant a ſettlement in *St. Andrew*'s. And there was no new contract or agreement at all. Nor is any thing ſtated that can deſtroy the ſettlement gained in *St. Andrew*'s by ſerving a whole year there. Unto which it was replied, That it is the conſtant practice for ſervants to go on upon the firſt agreement, without any new one. And if this were not the caſe, then a ſervant who had lived with his maſter twenty years in different pariſhes, without any new contract, muſt be ſettled in the pariſh where his maſter had lived in the firſt year of his ſervice. And by the whole court: As there was a hiring for a year, and a ſervice for a year, and a continuance under the ſame ſervice, it is ſufficient to gain a ſettlement; and ſuch ſettlement muſt be in the pariſh where it was performed the laſt forty days. *Str.* 1240. *Burrow's Settl. Caſ.* 256.

M. 22 *G.* 2. *Wrinton* and *Chewſtoke*. *Anne Stokes*, the pauper, when 13 years of age, went into *Chew Magna* to the houſe of her aunt; and ſoon afterwards went to *Winford*, and worked with one *Nicholas Walker* clothworker, in the buſineſs of burling cloths, by a weekly hiring or agreement at the weekly wages of 1s 6d each week in the winter, and 2s each week in ſummer. On *Saturday* in each week, *Nicholas Walker*, when he paid the pauper her wages for that week, ſaid to her, that ſhe ſhould come the week following. Which ſhe accordingly did, and renewed the contract for the week enſuing, in the ſame method. She continued to work with the ſaid *Nicholas Walker* in *Winford*, in the manner aboveſaid, for a year and an half; but during all that time, conſtantly returned in the evening and lodged at her aunt's in *Chew Magna*, and alſo reſided with her aunt there on *Sundays*. On the laſt *Saturday* of the ſaid ſervice, the pauper covenanted to ſerve the ſaid *Nicholas Walker* for a year, at 11 10s wages; entered immediately into the ſaid ſervice, and continued therein eleven months in *Winford*. By the court: The pauper did not acquire a ſettlement by this ſervice in *Winford*. For tho' a ſubſequent ſervice for leſs than a year, performed under a hiring for a year, may be coupled to a prior ſervice which was not performed under a hiring for a year, provided it be a continuance of the ſame ſervice; yet the ſubſequent ſervice cannot, in the preſent caſe, be coupled with the former, becauſe the former hiring was not of the ſame kind with the latter: The former was a day labourer, or weekly labourer at moſt; not as a hired ſervant, who is part of the maſter's family. *Burrow's Settl. Caſ.* 280.

H. 6 *G.* 3. *Underbarrow* and *Bradley-Field* v. *Croſthwaite* and *Lythe*. Two juſtices make an order for the removal of *Anne Kellet* from the townſhip of *Underbarrow* and *Bradley-Field* to the townſhip of *Croſthwaite* and *Lythe*. The ſeſſions, upon appeal, diſcharge that order, and ſtate ſpecially: That the pauper *Anne Kellet* hired herſelf at *Chriſtmas* to *John Thompſon* of *Croſthwaite* and *Lythe*, till *Whitſuntide* then next following; which time ſhe ſerved. At the ſame *Whitſuntide* ſhe hired herſelf to the ſaid *John Thompſon* for one year, and continued in the ſaid ſervice till the beginning of *March* following, when ſhe and her maſter parted by conſent. The ſeſſions were of opinion, that the ſaid *Anne Kellet* gained no ſettlement by the ſaid ſervice in *Croſthwaite* and *Lythe*, and therefore quaſhed the order of the two juſtices, ſubject nevertheleſs to the opinion of this court. It was moved to quaſh the order of ſeſſions, and to affirm the original order; for that there was, upon the ſtate of the facts, a hiring for a year and a ſervice for a year, when both were coupled together; though indeed the firſt hiring was for leſs than a year, and the ſecond ſervice was likewiſe for leſs than a year. On ſhewing cauſe, it was urged, that the two leading caſes of *South Moulton* and of *Overton* and *Steventon* were determined upon facts prior to the explanatory ſtatute of the 8 & 9 *W.* before which ſtatute, a hiring for a year, and a ſervice for 40 days gained a ſettlement. And it was obſerved, that in the caſe of *Aynhoe*, lord *Raymond* and alſo Mr. juſtice *Page* declared, that if it had been then *res integra*, they ſhould have adjudged it to be no ſettlement in *Biceſter*: And now it appears to be ſo; as the two ſuppoſed precedents were in fact no precedents at all, being prior to the ſtatute of the 8 & 9 *W.* By the court: The authority of theſe caſes will be juſt the ſame, whether the facts were prior to the ſtatute or not: Becauſe the court determined them as upon facts ſubſequent to the ſtatute. And there having been many determinations the other way, the court were unanimouſly of opinion, that for the ſake of certainty, it is beſt to adhere to ſettled determinations. Though there might be room for great doubt upon this point, if the matter were again open; yet the rule *ſtare deciſis*, is always proper, and eſpecially in theſe caſes of ſettlements. And the order of ſeſſions was quaſhed, and the original order affirmed. *Burrow's Settl. Caſ.* 545. [Note, Upon ſearching the records it hath appeared, that the caſe of *Bridget Bayly* was *after* the explanatory ſtatute of the 8 & 9 *W.* And the miſtake did

ariſe

ariſe from the errors of the ſeveral reporters of that caſe, as to the particular times of her hiring and ſervice. The other caſe, *viz.* of *South Moulton*, is not to be found upon the file: And the report thereof in lord *Raymond* is ſo very imperfect, that nothing can with certainty be concluded from it. Sir *James Burrow* takes notice, that it is not impoſſible that this caſe of *South Moulton* may be the very ſame with that of *Overton*. Which conjecture ſeems to be ſupported by this obſervation, that the reporters of both the caſes expreſs that *Holt* chief juſtice was abſent. And there was no other determination in that term, according to the reports thereof in lord *Raymond*, wherein it doth not expreſsly appear that *Holt* chief juſtice was preſent.]

H. 20 *G.* 3. *Ulverſton* againſt *Underbarrow* and *Bradley-Field*. Two juſtices remove *Thomaſin Hallhead* from the townſhip of *Ulverſton* in the county of *Lancaſter*, to the townſhip of *Underbarrow* and *Bradley-Field* in the county of *Weſtmorland*. The ſeſſions upon appeal confirm that order, and ſtate ſpecially, That *Thomaſin Hallhead*, being ſettled in the townſhip of *Underbarrow* and *Bradley-Field* by a derivative ſettlement from her father, was hired for a year in the ſaid townſhip of *Underbarrow* and *Bradley-Field*, from *Whitſuntide* 1770 to *Whitſuntide* 1771, to one *Burrow*, for the yearly wages of 18s; where ſhe lived with him under this hiring, till the 12th of *May*, being old *May-day*, 1771: That her maſter then removing to a new farm in the townſhip of *Strickland Roger*, carried her with him; where ſhe ſerved ſeven days, which compleated her year, and received her wages: Then ſhe again hired herſelf to the ſame maſter for another year, from *Whitſuntide* 1771 to *Whitſuntide* 1772, for the wages of 25s; and under this laſt hiring ſhe continued with him in *Strickland Roger* from *Whitſuntide* 1771 till *Candlemas* following, when by mutual conſent ſhe quitted her ſervice, and received her wages up to that time.——In ſupport of the orders, it was endeavoured to diſtinguiſh this caſe from that of *Croſſcombe*, where the pauper having been hired for a year in one pariſh, and having lived that year there, and received his wages, continued a quarter of a year longer, and then went with his maſter into another pariſh, and lived with him there ſix months, without coming to any new agreement; and the court held that he was ſettled in the laſt pariſh: Which caſe was argued on the ground of there being no interruption, no new contract, but a continuance and prolongation of the term of ſervice under the firſt hiring. So where there is a demiſe for a year, and

the tenant holds over without any new bargain, he is ſtill conſidered as holding under the orignal demiſe. But here the firſt contract was at an end both in form and ſubſtance; there muſt have been a chaſm in point of time between the firſt and ſecond hiring; it was a new bargain, and the wages were different; the ſecond hiring muſt be conſidered exactly as if there had been a change of maſters. ——On the other ſide, it was obſerved, that if a chaſm were to be admitted between the end of the firſt year and the new bargain for an increaſe of wages, that would not make ſuch an interruption as to prevent a ſettlement. And for this was cited the caſe of *Fifehead Magdalen*, where there was an interruption and abſence from the maſter's houſe for above an hour; and of *K.* and *Ellesfield*, where the interruption was ſtill longer, but not for a whole day; which caſe was determined on the ground that there is no fraction of a day.—— By lord *Mansfield* Ch. J. We are all very clear, that this was a continuance of the ſame ſervice, with an increaſe of wages.——And both the orders were quaſhed. *Douglas.* 296.

Same ſervice, but not with the ſame maſter.

(2) *E.* 4 *G. Ivinghoe* and *Solebury.* A perſon was hired for a year to one *Knight*, who rented a farm in *Ivinghoe*, and lived with him half a year: The maſter lets the farm to one *Smith*, and the ſervant lives the reſidue of the year with *Smith* in the farm, without any words paſſed about diſſolving the contract with *Knight*, or making any new contract with *Smith.* And at the end of the year, the ſecond maſter paid him his wages. The queſtion was, If this ſhall be deemed the *ſame ſervice*, ſo as to gain a ſettlement? By *Pratt* Ch. J. and the court: This is a good ſettlement: If a maſter command his ſervant to live with another for a certain time, it is a ſervice to the firſt maſter, and here being no new contract, it is carrying on the ſervice of the firſt maſter. And the ſubſequent maſter paying his wages did not alter the caſe; for the contract not being deſtroyed, he might have brought an action againſt the firſt maſter. 1 *Seſſ. C.* 121. *Caſes of S.* 109. *Str.* 90.

E. 15 *G.* 2. *Ladock* and *St. Enoder.* *John Roberts* was hired for a year in *Ladock.* His maſter died within the year, leaving *William Huddy* of *St. Enoder* his executor. The executor aſked the ſervant, if he was willing to ſerve out the year with him. The ſervant agreed to it, and did ſerve the executor in *St. Enoder* during the remainder of the year. By the court: This is a continuance of the ſame ſervice; the contract was not diſſolved by the death of the maſter; and the ſervant gained a ſettlement in *St. Enoder.* And this is a ſtronger caſe than that of *Ivinghoe*, the

the aſſignee of the farm in that caſe being a mere ſtranger; whereas this was the caſe of an executor, on whom the law caſts a privity of contract. *Burrow's Settl. Caſ.* 179.

(3) *E.* 11 *G. K.* and *Whitechapel.* A perſon was hired for five years, to work at a glaſs-houſe in *Whitechapel*, at the rate of 10 s a week; but never lodged with his maſter in the houſe any part of the time, but at another houſe in the pariſh. By the court: He has gained a ſettlement there: for being hired to ſerve above a year, and having ſerved and reſided in the ſame pariſh purſuant to ſuch hiring, he hath fully complied with the ſtatute, and it is not material where he lodged, ſo that it were within the pariſh. 2 *Seſſ. C.* 114. *Foley.* 146. Same ſervice, but not in the ſame place.

T. 12 *An. Silverton* and *Aſhton.* A ſervant maid was hired for a year in the pariſh of *Aſhton*, where ſhe ſerved half a year; then her maſter, and ſhe with him, removed to the pariſh of *Patſhall*, where her maſter took another farm; the ſervant continued with him in the pariſh of *Patſhall* for the other half year: And the queſtion was, Whether ſhe gained any ſettlement in either of theſe places; and if ſhe did, in which of them? By the court: Here is what the act requires, a hiring for a year, and a ſervice for a year. For it is the ſame ſervice; and the ſtatute doth not tie it down to one place. If a perſon is hired to a maſter in one pariſh, and goes with him into another pariſh, and ſerves him for one whole year; the pariſh he continues laſt in for 40 days before the end of his year, is the place of his ſettlement: and the reaſon why the 40 days gain a ſettlement is, becauſe he comes there with his maſter, and you cannot remove him from his maſter, and having continued with him 40 days unremoveable, he gains a ſettlement. *Foley.* 188. *Caſes of S.* 23.

T. 8 *G. St. Peter's* in *Oxford* and *Chepping Wycomb.* Upon a ſpecial order of ſeſſions it appeared, that the maſter of the *Oxford* ſtage coach hired a ſervant for a year, to ſtay in an inn in *Wycomb* where the coach baited, and to take care of the horſes: he lived there for the whole year, and the maſter all the while lived in *Oxford.* The queſtion was, Where that ſervant gains a ſettlement, or whether any by that ſervice? And by the whole court, he gained a ſettlement in *Chepping Wycomb*, though his maſter never lived there. *Str.* 528. *Foley.* 200.

H. 1 *G. Biſhop's Hatfield* and *St. Peter's* in *St. Alban's.* Two juſtices remove one *Langley* from *Biſhop's Hatfield* to *St. Peter's.* Upon appeal, the matter was ſtated ſpecially, that this *Langley* was a huntſman to one Mr. *Arnold*, and that

that Mr. *Arnold* lived ſometimes in *Weſtminſter*, and ſometimes at his houſe in *Northamptonſhire*, but that Mr. *Arnold* had no ſettlement in *St. Peter*'s; and that this *Langley* ſerved the laſt 40 days of his year in the pariſh of *St. Peter*'s with his maſter Mr. *Arnold*: which the juſtices at ſeſſions thought gained no ſettlement for *Langley* in *St. Peter*'s, and quaſhed the order of two juſtices. But the court of king's bench, upon the orders being removed by *certiorari*, quaſhed the order of ſeſſions, and held *Langley*'s ſettlement to be in *St. Peter*'s, by ſerving his maſter Mr. *Arnold* the laſt 40 days of his year there, though his maſter *Arnold* had no ſettlement there. *Foley*. 197. *Str*. 794.

M. 15 *G.* 3. *Eaſt Ilſley* and *Weybridge*. The pauper *James Allen* was hired for a year, and ſo for two years afterwards ſucceſſively, to the earl of *Portmore*, to look after the ſaid earl's running horſes; and during the ſaid three years removed from place to place with the ſaid horſes, the laſt ten months of which time he reſided with the ſaid horſes at *Eaſt Ilſley*, which was a public place for exerciſing and training running horſes; which ſaid earl had not any houſe in *Eaſt Ilſley*, nor any eſtate there. The queſtion was, Whether a groom, reſiding at a public place, where his maſter had no houſe nor eſtate, merely for the purpoſe of training running horſes, ſhould gain a ſettlement at that public place. And the court were unanimous, that this was a good ſettlement, being exactly the ſame caſe as that of the huntſman at *St. Alban*'s. Burrow's Set. Caſ. 722.

T. 8 *G. St. Peter*'s in *Oxford* and *Fawley*. Mrs. *Cook* lived with her ſon in law Dr. *Clavering* at *Chriſt Church*, and hired a ſervant for a year, who was ſettled in *St. Peter*'s. Mrs. *Cook* afterwards goes to *Fawley* upon a viſit; and ſhe, with her ſervant, ſtaid there for three months, and afterwards came back again to *Chriſt Church*, where the ſervant ended the year's ſervice, being not 40 days after her return. The queſtion was, Whether this ſervant gained any ſettlement at *Fawley*, living with her miſtreſs, who was only a viſitor? And by the whole court: The ſettlement of the ſervant doth not at all depend on the ſettlement of the maſter; for if a maſter hire a ſervant for a year, and after remove from one pariſh to another during that year, it may be properly ſaid that the ſervant is hired in every pariſh he ſhall go into with his maſter; and the pariſh where he lives with his maſter the laſt 40 days of his year, is the place of his ſettlement. And it is not material to the ſervant, whether the maſter goes there under the capacity of gaining a ſettlement for himſelf or not;

not; the ſervant goes there in the capacity of a ſervant; and it is like the caſe of a ſchool-boy; he gains no ſettlement, but the ſervant that waits upon him will. And it was adjudged that the ſervant was ſettled at *Fawley*. Caſ. of Settl. 139. Foley. 194. Str. 524.

E. 30 *G.* 2. *Alton* and *Elvetham*. This caſe was argued the laſt term, and the court took time to conſider of it; and this term, lord *Mansfield* Ch. J. delivered the reſolution of the court: This was an order made by two juſtices for the removal of the wife of the pauper and four children from the pariſh of *Elvetham* to the pariſh of *Alton*; and upon appeal to the ſeſſions, the ſame was there confirmed: But the ſeſſions ſtate the fact ſpecially, That the pariſh of *Alton* in the year 1722, gave a certificate to the father of the pauper to the pariſh of *Elvetham*; under which, the father went to the pariſh of *Elvetham*, and has dwelt there ever ſince: then it ſtates the pauper and other children being born there, and that the pauper on the 29th of *Auguſt* 1734 was hired for a year as a covenant ſervant by Sir *Henry Calthorp* at *Elvetham*, and ſerved that year out in that pariſh; that at the expiration of this year, he was hired again as a covenant ſervant by him for another year, and ſerved that year, but it happened that the laſt 40 days of the ſecond year were at *Scarborough* in *Yorkſhire*; that he did not at the end of the ſecond year quit the ſervice, but on the 29th of *Auguſt* 1736, he applied to his maſter to make a new agreement for another year, when the maſter ſaid it would be time enough when they returned home to *Elvetham*; whereupon he continued for about 6 weeks with his maſter at *Scarborough*, when they returned home to *Elvetham*; then he was hired for a third year, and ſerved that year out in *Elvetham*, and continued in his ſervice for ſeven years more, and his wages were advanced every year; and afterwards he quitted that ſervice, and married, and had four children mentioned in the order, which was, for removing the wife and four children, from *Elvetham* (the huſband having left his family) to *Alton* which gave the certificate. ——The juſtices conſidered him ſerving altogether in *Elvetham*, and that he could not gain a ſettlement there. It has been contended that they were in the wrong, for he ought to be conſidered as having gained a ſettlement in *Elvetham*, notwithſtanding the certificate. That is not contended for directly, becauſe ſervice for a year of a certificate perſon will not gain a ſettlement; therefore it is indirectly contended for, that he had gained a ſettlement: His maſter goes (probably for his health) to *Scarborough*, and happens to ſtay

there 40 days; and it is contended, that the ſervant then gained a ſettlement at *Scarborough*, which diſcharged the certificate, and then he afterwards gained a ſettlement at *Elvetham*.——The general queſtion is, Whether this accidental ſervice of 40 days at *Scarborough* acquired a ſettlement to the ſervant? It is immaterial, whether the maſter has or has not a ſettlement in the place where the ſervice is; becauſe that will not prevent the ſervant gaining a ſettlement: But the objection here is, Whether the 40 days at *Scarborough* are to be conſidered barely as a continuation of the ſervice at *Elvetham*, or a new *bona fide* ſervice at *Scarborough*? There are ſeveral caſes, where a ſervant, though locally abſent, may yet be conſidered as continuing his ſervice in the place to which he was hired. So if a ſervant was ill, and went to *Bath*, by the conſent of the maſter, that would be a continuation of the ſervice. Therefore the conſideration here is, of convenience and inconvenience, of juſtice and injuſtice, which will have great weight, unleſs there are authorities which ſtand in the way. I will conſider this, firſt, under the circumſtances of the caſe; then, ſecondly, I will conſider the authorities. The general ground upon which this muſt be determined, if there are no authorities, is this: Subſtantially, the maſter lived at *Elvetham*; he hired his ſervant to be a ſervant there; the pariſh was jealous of the ſervant coming in there, and got a certificate from *Alton*. Sir *Henry* happens to go to *Scarborough*, as a ſojourner for a particular purpoſe, not as an inhabitant. When they are to make an agreement for a third year, they both conſider themſelves as abſent from home. It would be perilous for theſe public places of reſort, if ſuch a ſervice were to gain a ſettlement. Beſides, what fraud would be brought upon pariſhes, if ſettlements might be gained in this manner, when a pariſh truſts to certificates? Suppoſe a perſon in ſervice has an accident upon the road by breaking a leg, and he ſtays 40 days at a place, ſhall that be a ſettlement? Suppoſe he ſtays 40 days with his maſter in a ſea-port being wind-bound, would that gain a ſettlement? The maſter's abode here is at *Elvetham*, which I lay great ſtreſs on. The domicil (as the Civilians call it) of Sir *Henry* was not at *Scarborough*.——I ſhall next conſider the authorities cited. The principal of which was the caſe of *St. Peter*'s in *Oxford* and *Fawley* (*Str.* 524.) The court will pay regard to former determinations for the ſake of certainty. But if an authority were ſingle, and plainly productive of inconveni-

ence, the court will in ſuch caſe over-rule it. But the preſent authority does not at all contradict the doctrine I have been laying down. This caſe was cited to ſhew, that a paſſage or tranſitory reſidence might gain a ſettlement. I ſhall ſtate the caſe as it is in *Strange*; where it is ſaid, that in the caſe of *Rufford* it was not doubted, but that hiring into an extraparochial place would gain a ſettlement. And ſo *Powel* J. ſomewhere ſaid, that if a ſervant was hired for a year in *Ireland*, and the ſervice was performed here, it would gain a ſettlement. But here I cannot but obſerve, that it is a great pity that caſes ſhould get abroad under the ſanction of great names, which being taken from notes that gentlemen took only for their own uſe, and not by any publick officer appointed for that purpoſe, are incorrect often in the ſtate of them. The preſent caſe, as reported in *Strange*, is moſt certainly miſreported. It is ſtated that the pauper was hired for a year into *Chriſt-church*, without ſaying how or under what circumſtances her miſtreſs lived there; and that her miſtreſs went upon a viſit to *Fawley-court*. Now her miſtreſs being a ſingle woman could not poſſibly have any abode in *Chriſt-church* but as a viſitor or friend. And it is farther ſaid, that the only doubt was, whether the ſettlement gained at *Chriſt-church* was ſuperſeded or not? That could not poſſibly be ſo. For ſhe could by no means gain a ſettlement in *Chriſt-church*, which was not only an extraparochial place, but a ſingle houſe only, having been once a monaſtery, being in nature of one of the king's palaces, which may be extraparochial. I mention this, to ſhew the incorrectneſs of caſes, which cannot be relied on. This caſe is alſo in *Foley* 215. and *Caſes of Settl.* 139. reported differently. But all of them together may ſerve to help us to the truth, and which upon inquiry I find to be this: Mrs. *Cook* the miſtreſs of the ſervant, had two daughters; one married to Dr. *Clavering* dean of *Chriſt church*; the other, to Mr. *Freeman* who lived at *Fawley-court*. And ſhe lived alternately with theſe two gentlemen her ſons in law; and was as much at *Fawley-court* as at *Chriſt-church*, and (as I obſerved before) it was not poſſible the ſervant ſhould be ſettled at *Chriſt-church*, becauſe it was an extraparochial ſingle houſe. This was, I think, the only material caſe cited at bar; but there is another which I have had mentioned to me, *Biſhop's Hatfield* and *St. Peter's* in *St. Alban's* (*Foley* 197), where a huntſman was hired by one Mr. *Arnold*, who lived ſometimes in *Weſtminſter*, and ſometimes at *Northampton*, and the ſervant reſided, where the hounds were kept, at

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St. Alban's; and the only queſtion was, Whether the ſervant could acquire a ſettlement there by ſuch ſervice, as his maſter had none? and there was no doubt but he could; for he came exactly within the caſe of a ſtage coachman, who was hired to ſerve at *Wycomb*, though the maſter lived at *Oxford*; where it was held, that the ſervant's ſettlement does not at all depend upon the maſter's. But that caſe was very different from the preſent; for the queſtion was not, Whether there was a continuance of ſervice with the maſter in *Weſtminſter* or *Northampton* but he was ſettled by living in that place with the hounds; and the maſter, I ſuppoſe, might be probably a member of parliament; and might have a houſe to go to for hunting merely, which is a very common caſe in the neighbourhood of *London*. However there is no preciſion in the caſe on which the court can rely; and upon the whole I think it not at all inconſiſtent with our preſent reſolution; which is, that in the preſent caſe the whole of the ſervice was only a continuation of the ſervice at *Elvetham*. However I would have it obſerved in the preſent caſe, that I lay great ſtreſs on both the maſter and ſervant conſidering *Elvetham* as their home, as alſo upon the precedent and ſubſequent ſervice, and upon the circumſtances of the certificate.——There was another objection at bar, but not relied on; that it does not appear but that the huſband may be living, and he is not removed, and may have gained a ſettlement ſince. But this the court will not preſume. If he is living, they muſt remove him after to his family. And both the orders were confirmed. *M. S.*

And the difference between this caſe and that of *St. Peter's* in *Oxford* and *Fawley*, ſeemeth to be this: that a viſitor, during the time of the viſit, may be conſidered as part of the family of the perſon viſited, and hath there *pro tempore* his home and place of abode; but a perſon at *Scarborough* or other ſuch like place of publick reſort, under the circumſtances abovementioned, is only a ſojourner, or in the nature of a traveller, or as a gueſt in an inn, and cannot in any ſenſe within the words of the ſtatute be looked upon as *coming to ſettle* there.

[Note, with reſpect to the aforeſaid caſe of *St. Peter's* and *Fawley*, Sir *James Burrow* ſays, there having been ſo much doubt and miſapprehenſion concerning it, he has had the curioſity to tranſcribe it from the original record: which is as follows.—Two juſtices removed *Mary Norris* from the pariſh of *St. Peter's in the Eaſt* in *Oxford*, to the pariſh of *Faley* in the county of *Oxford* aforeſaid. Which order was diſcharged by the ſeſſions, upon appeal; it appearing (as

(as it is ſtated in the order of ſeſſions) that the ſaid *Mary Norris* was hired at *Chriſt-church* in *Oxford*, an extra-parochial place, on the 16th of *May* 1717, for one year to Mrs. *Cooke*, who then lived, and ever ſince hath lived, with her ſon in law Dr. *Clavering*, canon of *Chriſt-church* college aforeſaid, as a ſojourner or boarder; and continued in her ſervice there till the month of —— in the ſame year; when Mrs. *Cooke* went, upon a viſit, to her ſon Mr. *Freeman*'s, in the pariſh of *Faaley* aforeſaid, where ſhe continued three months, upon the ſaid viſit; and her ſaid ſervant *Mary Norris* was with her at the ſaid Mr. *Freeman*'s, and continued there in her ſervice all the three months. At the end of which the miſtreſs returned to *Chriſt-church*, and there the ſervice expired, ſhe having ſerved her miſtreſs the whole year, in purſuance of the firſt hiring: And the order of ſeſſions was quaſhed, and the original order affirmed. *Bur. Settl. Caſ.* 422.]

(4) *E.* 17 *G.* 2. *Beccles* and *Loweſtoft*. A perſon was hired to a blackſmith for a year, at 31 a year. During the year the maſter gave him leave to work with another ſmith for three days, with another for a week, and with a third for a fortnight; and agreed that the ſervant ſhould have the advantage of it. After which he returned and ſtaid out the year, and the maſter by his conſent deducted the proportion of wages for the time he was away. The ſeſſions held no ſettlement was gained, the firſt contract being diſſolved. But by the court; The order muſt be quaſhed: for this is not a diſſolution of the contract, but a licence to be abſent. Service by the maſter's conſent with another perſon is ſervice of the maſter. But in this caſe, if it had been without the maſter's conſent, yet the abſence had been diſpenſed with by the maſter's taking him again. *Str.* 1207. *Burrow's Settl. Caſ.* 230. Abſence during the ſervice.

T. 26 & 27 *G.* 2. *Hanbury* and *Tardebigg*. The ſervant was hired for a year at *Michaelmas*, but did not come to his ſervice till three days after *Michaelmas* day, and ſerved till the day after *Michaelmas* in the next year. He was abſent about two or three days at a time, in the whole a fortnight, without conſent, but was always received again. At going away, he agreed to make a deduction of 6 s 6 d of his wages, for the time he was abſent. By the court: He gained a ſettlement by this ſervice. This court hath not been ſo ſtrict in determining upon the ſervice, as they have been upon the hiring. It hath often been held, that though a ſervant has been abſent for a time, yet his maſter taking him again purges his abſence. And there is no difference between an abſence in the

the beginning and in the middle of the ſervice; for he is a ſervant from the time of hiring. *Burrow's Settl. Caſ.* 322.

M. 1 *G. Paulett* and *Burnham.* A perſon was a covenant ſervant for a year, but went away three weeks before his year was out, by his own and his maſter's conſent; and was abated 6 s of his year's wages for it. It was objected, that being a covenant ſervant, this doth import that it was by deed, and then the conſent cannot diſcharge the covenant. By the court: Here is no fraud expreſſed or implied. It is not within the words of the act, nor the meaning. Can a man compel his ſervant to gain a ſettlement *nolens volens?* As to the covenant being by deed, and ſo the ſervice continuing, perhaps he might bring an action on the covenant, and as to that point the ſervice continued; but not as to gaining a ſettlement, where the ſtatute ſaith he muſt ſerve for a year, which is not in this caſe. *Caſes of Settlm.* 84. *Foley* 187. 1 *Seſſ. Caſ.* 71.

E. 7 *G. K.* and *Iſlip.* A perſon is hired for a year; and in the year's ſervice his maſter gives him leave to go and ſee his mother for one day, and he tarried three days, and then came home again, and his maſter took him into his ſervice as before. It was objected, that his ſtaying to ſee his mother without leave was a deſertion of the ſervice, and the time he ſtayed away takes ſo much off from a complete ſervice for a year. But by the court: This will not prevent the ſettlement; for the maſter's taking him again is a purgation of the offence, and no interruption of his ſervice.—In the ſame caſe it was ſtated, that the ſervant for ſix days was ſick, and incapable of any ſervice: And it was objected, that therefore he could not gain a ſettlement, which is to be acquired only by a ſervice for a year; but here he did not ſerve for ſix days, and ſo there wants ſo much of a ſervice for a year. But by the court: A ſervant that lies thus under the viſitation of God, which befalls him not through his own default, is and muſt be taken to be all the while in the ſervice of his maſter; and if this exception were to be allowed, it might prevent all the ſettlements in the kingdom.—Another circumſtance in the ſame caſe was this: The ſervant, three or four days before his ſervice expired, deſired leave of his maſter to go to a fair, to hire himſelf into another ſervice. His maſter refuſed, and told him, if he went, he ſhould not come into his houſe again. The ſervant went notwithſtanding; and did not return until the time of his ſervice was expired. By the court: This

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is nevertheleſs a ſettlement. The requeſt of the ſervant is a reaſonable requeſt; and the law will not ſuffer a maſter to ſhew himſelf ſo inhuman to his ſervant. A maſter cannot turn off his ſervant two or three days before the year expires; if he doth, the ſervice in point of law continues, and he gains a ſettlement notwithſtanding. *Caſes of Settl.* 129. *Str.* 423.

T. 8 *G. Eaſtland* and *Weſthorſley.* A ſervant was hired for a year; and the day before the year expired, the maſter told him, that to prevent his gaining a ſettlement in that pariſh, he ſhould go away immediately; which the ſervant refuſed to do, inſiſting to ſerve out the year; whereupon the maſter turned him out of doors. The court held this to be ſuch a fraud in the maſter, as ſhould not prevent the ſettlement of the ſervant. *Str.* 526.

H. 4 *G.* 2. *K.* and *Preſton.* A perſon ſerved under a hiring his whole year within 5 days, and then left his maſter by conſent, the pariſh officers where he lived having firſt given him two guineas to leave the pariſh. The juſtices held this to be no ſettlement, and ſtated the caſe ſpecially. It was objected, that this departure was fraudulent. But by the court: The juſtices might upon evidence have examined into that point; and if they had thought that his departure was fraudulent, they would without queſtion have ſtated it to have been ſo; but that not being done, we cannot intend any fraud, nor that the party hath gained any ſettlement, it being agreed on all ſides, that he hath not ſerved his year. *Burrow's Settl. Caſ.* 69.

M. 9 *G.* 2. *Syford* and *Caſtlechurch.* A perſon was hired for a year, which he ſerved till the laſt 12 days, when he went away with his maſter's leave, and ſtaid till after the year was up, when he returned for his cloaths, and was paid the whole year's wages. And on conſideration, that if they once allowed this abſence for 12 days at the end of the year (which differed from an abſence in the middle of the year, which was purged by taking him again) they ſhould not know where to ſtop, it was determined that he gained no ſettlement. In this caſe the ſervant went from his ſervice before the year was out, and the maſter conſented to it; which is a plain determination of the ſervice within the year. *Str.* 1022. *Burrow's Settl. Caſ.* 68.

T. 19 *G.* 2. *St Peter's* in *Sandwich* and *Goodneſton. William Markham* was hired for a year, and lived with and ſerved his maſter in *Northbourne* till within three weeks of the end of the year, when he aſked leave of his maſter

to go to the herring fiſhery. The maſter conſented, if he could get a man to do the maſter's work to his liking. *Markham* did ſo, and paid the man. *Markham* went to ſea, and returned at the end of the herring fiſhery, which was about three weeks after the end of his year. The maſter paid him all his year's wages. By the court: This was no diſſolution of the contract; *Markham* gained a ſettlement at *Northbourne*; and as the maſter had the benefit of the contract during the whole year, ſo ought the ſervant alſo. *Str.* 1232. *Burrow's Settl. Caſ.* 251.

E. 31 *G.* 2. *Caverſwall* and *Trentham*. *Samuel Braſſington* the pauper was hired for a year to *Edward Braſſington* at *Trentham*, and ſerved him till within three weeks of the end of the year; when, on ſome diſputes ariſing betwixt him and his maſter, he was with his own conſent, diſcharged from his ſervice; and received all his wages, except what was deducted for the three weeks. As ſoon as he left his ſervice, he went to *London*, and was abſent about a fortnight. Upon his return, at Mrs *Braſſington*'s requeſt (his maſter being then from home) he went again into their ſervice; and within a week after the expiration of the firſt year, his maſter hired him again for another year; and he ſerved him in *Trentham* for about ſix months of that ſecond year, and then left him. By the court: Here was a diſcontinuance. The firſt contract was abſolutely diſſolved, and ſo continued for a fortnight or three weeks. Therefore this laſt ſervice cannot be connected with the former part of the year; and conſequently no ſettlement was gained at *Trentham*. Burrow's Settlem. Caſ. 461.

E. 32 *G.* 2. *Kiſlingbury* and *Nether Hyford*. It was ſtated, that *John Gare* the pauper, was hired for a year to widow *Bliſs* of *Farthingſtone*; and continued in the ſaid ſervice until five weeks before the end of the year; when, with his miſtreſs's leave, he parted with her, and went to work at *Kiſlingbury*, and ſtaid there the ſaid five weeks. After the end of the year, the ſaid *Gare* went to his ſaid miſtreſs *Bliſs* for his year's wages; the whole whereof ſhe laid down to him, and he thereout voluntarily deducted 10 s for his five weeks abſence, being the ſame ſum he had earned and received for his five weeks at *Kiſlingbury*. The original contract was not diſſolved, nor any new one made with his miſtreſs *Bliſs*, ſave as aforeſaid. And if his miſtreſs had, during the ſaid five weeks, required him to return to her, he would have done ſo. It was objected, that this could not be a ſettlement, as there wanted five weeks of the ſervice. By lord *Manſfield*

field and the court: The queſtion turns ſingly upon this, Whether his abſence for five weeks was a diſſolution of the contract? If he had his miſtreſs's leave, it was not; if he had it not, it was. And we are all of opinion, that it was only an abſence with leave. For it appears, that both parties conſidered the contract between them as ſubſiſting, and not diſſolved. He paid her the whole that he had earned in the five weeks that he was abſent, conſidering himſelf as her ſervant during that time. For otherwiſe the deduction would not have been a deduction of the particular ſum earned by him; but a deduction in proportion of his whole year's wages to the time of his abſence. And he looked upon himſelf as liable to be called back within the five weeks. And it is ſtated, that the original contract was not diſſolved, ſave as aforeſaid. Therefore we are all of opinion, that the contract was not diſſolved, and conſequently that the pauper gained a ſettlement with his miſtreſs *Bliſs* at *Farthingſtone*. Burrow's Settlem. Caſ. 479.

E. 33 *G.* 2. *Chriſt-church* and *St. Matthew's Bethnal Green*. *Elizabeth Maxey* was, on the 24th day of *Auguſt* 1757, hired into *Chriſt-church* for a year, and continued in the ſaid ſervice till the 7th of *Auguſt* then next following; when ſhe was frightened into fits, and thereby rendred incapable of doing any ſervice. Her maſter being taken ill, and diſturbed by her fits, deſired Mr. *Lemonier*, who lived in the pariſh of *St. Matthew Bethnal Green*, to take her into his houſe, that ſhe might be under the care of her ſiſter who lived there; but if Mr. *Lemonier* refuſed to receive her, ſhe was then to return to her maſter's houſe. Mr. *Lemonier* took her in; and ſhe reſided there about five days; and then was taken into the hoſpital. The day after ſhe had been received into Mr. *Lemonier*'s houſe, ſhe returned to her ſaid maſter's houſe to fetch away her clothes; and her miſtreſs gave her two ſhillings, which, with what ſhe had before received, made up the full year's wages. No words of diſcharge paſſed between her and her miſtreſs; but ſhe looked upon herſelf as then diſcharged from her ſervice; but believed, that had ſhe recovered her health, her maſter would have received her again into his ſervice. She continued under the ſame indiſpoſition, till after the year from the ſaid time of hiring was expired; and never returned again into her ſaid maſter's ſervice. And on the 17th of *Auguſt* 1758, her maſter hired another ſervant in her place. It was objected, that this ſervice could not gain a ſettlement, being ſeventeen days ſhort of the year. The caſes

that have been were, where the abſence was in the middle of the year, and the abſence purged by the maſter's receiving the ſervant again. But here the abſence was 17 days at the end of the year; and if this be allowed, where can the court ſtop? It may as well be a want of three weeks, or a month, or two months. By lord *Mansfield* Ch. J. This caſe is an additional proof, among many others, upon how inconvenient a foot the law of ſettlements ſtands. This muſt appear a very clear caſe to any perſon of common plain ſenſe and underſtanding. It is certainly a fair *bona fide* ſervice for a year, without any fraud on either ſide. If a maſter gives his ſervant leave to go upon any other ſervice, or to be abſent for a ſhort time, and pays him his whole wages, this is a good ſervice. If the ſervant is taken ill, by the viſitation of God, it is a condition incident to humanity, and is implied in all contracts. Therefore the maſter is bound to provide for and take care of the ſervant ſo taken ill in his ſervice; and cannot deduct wages in proportion to the continuance of the ſervant's ſickneſs. And there is no difference, whether the accident of ſickneſs happens in the middle or at the end of the year. It is equally the act of God, and without any fault of the ſervant. And in the preſent caſe, the ſervant's being at Mr. *Lemonier*'s, or in the hoſpital, is juſt the ſame thing as her being kept in the maſter's houſe, under his own roof. *Bur. Set. Caſ.* 494.

T. 6 *G.* 3. *Frome-Selwood* and *Brixton Deverel*. *Richard Stent*, the huſband of the pauper, was hired for a year at *King's Weſton*, and ſerved that year till within ten days of the end of the year, when *Stent* declaring to his maſter, that he wiſhed not to be ſettled in *King's Weſton*, aſked his leave to go and viſit his relations. To which the maſter conſented. After the year was expired, *Stent* returned to his maſter, and then hired himſelf as a day labourer, and as ſuch continued with him about three months. On making up their accounts, *Stent* allowed out of his daily wages, for the days he had been abſent the preceding year. The court held the ſettlement to be in *King's Weſton*, looking upon the leave and conſent of the maſter as fraudulent, and a mere evaſion of the ſettlement. *Burrow's Settl. Caſ.* 565.

H. 11 *G.* 3. *Madington* and *Wilsford*. The pauper, being hired for a year from *Michaelmas*, continued in his ſervice till about three weeks before the next *Michaelmas*; when, having been kicked by one of his maſter's horſes, he went home to his friends, about five miles off, without his maſter's knowledge or aſking his leave, to cure

cure his leg; and continued there during the remainder of the year, and never returned to his maſter, except for his wages, ſome ſhort time after *Michaelmas*; when he was paid the whole, except ſix ſhillings, which the maſter deducted on account of the ſaid abſence; which the pauper conſented to.——It was argued, that the pauper by this ſervice gained no ſettlement: That this was a deſertion of the ſervice: It doth not appear that it was neceſſary for him to go home; or that he could not return again; or that he was diſabled by this kick, from being able to perform his ſervice, at leaſt in ſome degree; or that the maſter knew where he was. And nothing ſhall be preſumed, that is not ſtated.——But the court were of opinion, that the ſervant gained a ſettlement by the ſervice here ſtated. And they thought it to be within the reaſon of the determination of the *Iſlip* caſe. Here, the cauſe of his going home to his friends clearly and fully appears to have been, to cure his leg, which had been hurt in his maſter's ſervice, and by a kick from his maſter's horſe. This was a reaſonable cauſe of abſence. It did not diſſolve the contract, nor hinder his gaining a ſettlement; and the maſter ought not to have deducted any part of his wages. *Burrow's Set. Caſ.* 675.

T. 11 *G.* 3. *Roſs* and *Whitchurch*. *Thomas Cheſt*, the pauper, hired himſelf for a year to *Edmund Miles*; and ſerved him, in *Langarren*, only three days. A difference ariſing between them about the buſineſs the pauper was employed in, *Miles* (the maſter) bid the pauper go about his buſineſs. On which the pauper immediately ran away, and quitted his ſervice; and hired himſelf to *John Whitby* for a year, at 55s a year wages, and ſerved *Whitby* for ſix months in *Whitchurch*. *Miles* then inſiſted on *Whitby*'s not keeping the pauper in his ſervice. *Whitby* paid the pauper his wages to that time: and the pauper quitted that ſervice, and went one or two voyages up the river *Wye*, as a labourer to a bargemaſter, for a fortnight. Then, at *Whitby*'s requeſt, and with *Miles*'s conſent, he returned into *Whitby*'s ſervice, without coming to any new agreement, or any mention of wages; and continued in *Whitby*'s ſervice in *Whitchurch* ſeven months, being a month over the end of the year for which he was hired, in order to make out his loſt time, and then received his wages. ——It was argued, that the fortnight's abſence being in the middle of the year, it was purged by the maſter's receiving him again.——But by the court: Here is an abſolute diſſolution of the contract, both by maſter and ſervant, at the end of ſix months. Whereas the ſtatute

requires a continuance in the ſame ſervice for a whole year. The new ſervice cannot be connected with the old hiring. *Bur. Settl. Caſ.* 688.

T. 11 *G.* 3. *Potter Higham* and *Ludham*. A ſervant, hired for a year, continued till the day before the end of his year; when he deſired his maſter to diſcharge him; telling his maſter, that as he had hired himſelf for the next year to a perſon in a diſtant place, he wiſhed to paſs that day with his friends; and requeſted to have that time to himſelf, to ſpend with them. To which the maſter conſented. And he was accordingly diſcharged; and then received the whole of his wages, except ſix-pence, which he allowed to his maſter for that day.——This was holden not to be a diſſolution of the contract, but an abſence by leave of the maſter. And it was adjudged, that the ſervant by this ſervice gained a ſettlement. *Bur. Set. Caſ.* 690.

E. 13 *G.* 3. *St. Margaret's Weſtminſter* and *Richmond*. The pauper *William Springall* was hired for a year to *Alexander Crawford* eſquire of *Richmond*, on the 30th of *October* to ſerve till the 30th of *October* following. Before the expiration of the year, namely, on the 4th of *September*, the pauper married a fellow-ſervant. The ſaid fellow-ſervant had given a month's warning in *Auguſt* preceding to quit the ſervice, and was to quit it in *September*, in conſequence of ſuch warning; but was deſired by her maſter to ſtay till the 17th of *October*, which ſhe did: And then the maſter ſaid to *Springall* (the huſband) that he ſuppoſed, as his wife was going away, he (the huſband) would like to do ſo too. The huſband replied, he would like it better, if it was agreeable to the maſter. His maſter ſaid, he had no objection, as he had another footman coming, and would pay him his whole year's wages: Which he accordingly did on the ſaid 17th, in full to the 30th. On which ſaid 17th of *October*, both the huſband and the wife left the ſervice. It was objected, that the pauper did not gain a ſettlement by ſerving for a year, becauſe he left the ſervice 13 days before the expiration of his year. The act of parliament is expreſs, That no ſuch perſon ſo hired as aforeſaid ſhall be adjudged to have a good ſettlement in any ſuch pariſh or townſhip, unleſs ſuch perſon ſhall *continue and abide* in the ſame ſervice during the ſpace of one whole year.—By lord *Mansfield* (with whom the other judges concurred): There is no neceſſity of an actual ſervice upon every day of the year. The maſter can always diſpenſe with it. He can give leave of abſence. Nay, if the ſervant is abſent without leave, in

in the middle part of his year, ſuch abſence may be purged, as it has been termed, by the maſter receiving him again; that is, the ſubſequent conſent of the maſter ratifies the act done. I am clearly of opinion, that the ſervant has in the preſent caſe ſufficiently ſerved his whole year. The maſter voluntarily gave him leave of abſence for the laſt 13 days; and, of his own accord, paid him the whole year's wages. *Bur. Set. Caſ.* 740.

Places exempted.

(5) By the 13 *G.* 2. *c.* 29. ſervants in the *Foundling hoſpital* ſhall not by ſuch ſervice gain any ſettlement in the pariſh where the ſaid hoſpital is ſituate.

And by the 9 *G.* 3. *c.* 31. ſervants in the *Magdalen hoſpital* (eſtabliſhed for the reception of penitent proſtitutes) ſhall not by ſuch ſervice gain any ſettlement in the pariſh where the ſaid hoſpital is ſituate.

vii. Of ſettlement by marriage.

What ſhall be deemed a ſufficient marriage ſo as to gain a ſettlement.

1. Heretofore it hath been ſomewhat doubtful, what ſhall be deemed a ſufficient marriage, ſo as that a woman ſhall gain a ſettlement thereby; and the courts have been favourable in admitting marriages, although not ſtrictly ſolemnized according to the laws of the church; but now by the ſtatute of the 26 *G.* 2. *c.* 33. a great diſtinction is made, between marriages ſolemnized before the 25th day of *March* 1754, and after that time: for by the ſaid ſtatute it is enacted, that after *March* 25, 1754, all marriages (except in *Scotland*, and except the marriages of jews and quakers, where both the parties are jews or quakers reſpectively), which ſhall be ſolemnized without licence or publication of banns, or in any other place than a church or publick chapel wherein banns of matrimony have been uſually publiſhed (unleſs by ſpecial licence from the archbiſhop of *Canterbury*), or without the conſent of parents or guardians (where either of the parties, not being a widower or widow, is under the age of 21), ſhall be null and void to all intents and purpoſes whatſoever. As in the caſe of *Chilham* and *Preſton*, *M.* 33 *G.* 2. Two juſtices removed *Edward Young*, *Rebecca* his wife, and *Mary* their child, from *Chilham* to *Preſton* near *Feverſham*, both in *Kent*. And the ſeſſions confirmed, in all points, the order of the two juſtices. The caſe, as ſtated to appear to the ſeſſions was, that the ſaid *Edward Young*, being legally ſettled in *Preſton*, and (not being then a widower) was on the 25th of *January* 1758, without the conſent of his father who was then living, married by licence in the pariſh church of *Tenham*, to *Rebecca Drury*

(who was ſettled in the ſaid pariſh of *Tenham*, and who is removed to *Preſton* by the ſaid order, as the wife of the ſaid pauper); the ſaid *Edward Young* being then an infant of 20 years: And that afterwards, the ſaid *Rebecca* was brought to bed in the pariſh of *Chilham*, of the ſaid *Mary*, removed by the order. It was argued in ſupport of theſe orders, that the word *void* in the act may be conſtrued *voidable*; and that it is highly unreaſonable, that a virtuous young woman and her innocent children ſhould be turned adrift, and be conſidered as a whore and baſtards, without having any opportunity to conteſt ſo ſevere a judgment againſt them: Therefore that this marriage ought to be avoided by a ſentence in the eccleſiaſtical court; and not in a collateral method, by an *ex parte* order of juſtices, made without hearing them or any perſon on their behalf. By lord *Mansfield* chief juſtice: This point will admit of no manner of doubt. There is this plain diſtinction between things *void* and *voidable*. Where the law makes a thing void for the benefit of the parties concerned, they may waive that advantage if they pleaſe. But the marriage act is avowedly made *againſt* both the contracting parties, and therefore they ſhall not waive the diſabilities of it at their own option. The marriage is void and null to all intents and purpoſes, even tho' the parties ſhould afterwards agree to it, wherever the fact appears directly contrary to the ſtatute.—And by the whole court: Let the order be quaſhed as to *Rebecca* and the child, and confirmed as to the pauper *Edward*. *Bur. Set. Caſ.* 486. *Black. Rep.* 192.

E. 21 *G.* 3. *King's Norton* and *Northfield*. Two juſtices made an order to remove *Abigail Jones*, widow of *Joſeph Jones*, from the pariſh of *King's Norton* to the pariſh of *Northfield*; which order the ſeſſions confirmed upon appeal, and ſtated ſpecially, That the pauper *Abigail Jones*, being ſettled at *King's Norton*, in the year 1775, intermarried with *Joſeph Jones* a ſettled inhabitant of *Northfield*, at *Buerly-hill* chapel in the pariſh of *Kingſwinford* in the county of *Stafford*, which was erected in the year 1765, and then duly conſecrated, and in which divine ſervice had been publicly and regularly celebrated ever ſince; and wherein banns of matrimony had been often publiſhed and marriages celebrated, previous to the marriage in queſtion: That the ſaid chapel was a new one, erected ſince the marriage act, and not erected on the foundation of one that was ancient; and no act of parliament was obtained for erecting the ſaid chapel, or for celebrating marriages there. The two orders being removed into the court of king's

king's bench, the queſtion was, Whether the marriage was void by the proviſions of the ſaid act?—On ſhewing cauſe, it was contended that the words *uſually publiſhed* in the act ought to be conſidered to mean, uſually at the time when the marriage in queſtion took place. If ſo, there was enough ſtated in the caſe for the court to conſider this as a chapel in which banns had been uſually publiſhed. The word *often* is nearly tantamount to *uſually*; but if it were not, yet as it is a rule that an order of ſeſſions is always to be ſupported, unleſs ſomething appears expreſsly on the face of it which ſhews it to be againſt law, the court would intend this to be ſuch a chapel as the act required, there being no direct aſſertion to the contrary. If the conſtruction contended for on the other ſide ſhould prevail, this act would prove a trap to clergymen and innocent perſons, who could not be expected to ſearch into hiſtory, to diſcover the exact time when marriages firſt began to be celebrated in any particular chapel. It is hard perhaps to draw a line, but here, an uſage was clearly eſtabliſhed long before this marriage took place.——Againſt the validity of the marriage, it was argued, that the act is to be conſtrued as if the caſe had happened the day after it had paſſed. Uſage *ſince* cannot vary the caſe. Arguments of hardſhip and inconvenience can only be reſorted to, when the law is doubtful; but here the words of the ſtatute are clear. This is no more a trap than any other prohibitory law. After the paſſing of the act, no marriages have been attempted to be celebrated in *Lincoln's-Inn* chapel, *Gray's Inn* chapel, and many others, altho' they are old chapels, becauſe banns had not been uſually publiſhed in them; and it would be abſurd, if a chapel erected ſince the act ſhould be in a better ſituation in that reſpect, than thoſe which had exiſted before.——Lord *Mansfield:* I was for ſome time averſe to determine a queſtion of ſuch ſerious conſequence in a collateral way, on a ſettlement caſe. But upon more conſideration, I think we ought now to decide it. If there has been an abuſe, we ought to ſtop it as early as poſſible. A delay might lead to a ſuppoſition that we doubt, when in truth we do not. The act clearly meant chapels exiſting at the time. I am of opinion that this marriage was void by the proviſions of the ſtatute. *Douglas.* 634. [Soon after this determination was known, an act was paſſed 21 *G.* 3. *c.* 53. for making all marriages which had been ſolemnized in any pariſh church or public chapel erected ſince the ſtatute of the 26 *G.* 2. and conſecrated, valid in law, and to exempt the clergymen who had ſolemnized

lemnized ſuch marriages, from the penalties of that ſtatute.]

THE paſſage into *Scotland* being left open by the act, many perſons have found their way thither to be married, in a manner very clandeſtine and irregular. And there hath been diverſity of opinions concerning the validity of ſuch marriages.

Lord *Stair*, in his inſtitutions of the law of *Scotland*, page 26, ſays, "The public ſolemnity of marriage, is a matter of order, juſtly introduced by poſitive law, for the certainty of ſo important a contract; but not eſſential to marriage. Thence ariſes the diſtinction, of public or ſolemn, and private or clandeſtine marriages. And altho' perſons who act contrary thereto may be juſtly puniſhed (as in ſome nations by excluſion of the iſſue of ſuch marriages from ſucceſſion), yet the marriage cannot be declared void and annulled; and ſuch excluſions ſeem very unequal againſt the innocent children. But by the cuſtom of *Scotland* cohabitation, and being commonly reputed man and wife, validates the marriage, and gives the wife right to her thirds, who cannot be excluded therefrom, if ſhe was reputed lawful wife, and not queſtioned during the huſband's life, till the contrary be clearly proved."

Mr. *Erſkine*, in his principles of the law of *Scotland*, pages 62 and 64, ſays, "It is not neceſſary that marriage be celebrated by a clergyman. The conſent of parties may be declared before any magiſtrate, or ſimply before witneſſes. When the order of the church is obſerved, the marriage is called regular; when otherwiſe, clandeſtine. Towards a regular marriage, the church requires proclamation of banns in the churches where the bride and bridegroom reſide. Formerly, not only biſhops, but preſbyteries, aſſumed a power of diſpenſing with proclamation of banns on extraordinary occaſions: but this hath not been exerciſed ſince the revolution."

In *M'Douall's* Inſtitute of the law of *Scotland*, vol. 1. p. 112. he ſays, "Marriage is perfected by ſole conſent; for carnal knowledge is only the conſummation of it. Marriage is either ſolemn, or clandeſtine. A ſolemn marriage is that which is celebrated by a miniſter of the eſtabliſhed church, or one having the benefit of the toleration act, after due proclamation of banns. This ought regularly to be done three ſeveral *Sundays*, in the churches reſpectively where the parties frequent divine ſervice; but

but if they belong to an epiſcopal meeting, it muſt be done in their congregation, and likewiſe in the pariſh churches where the parties reſide; and in caſe the miniſter of ſuch pariſh ſhall neglect or refuſe to publiſh the banns, it is declared ſufficient, if done in the epiſcopal congregation alone. But the public ſolemnity is only a matter of order, and not eſſential to marriage; and therefore by the law of *Scotland*, not only a marriage ſolemnized by any miniſter or prieſt is good, but likewiſe cohabitation as man and wife, ſufficiently aſcertains the marriage, not called in queſtion during their joint lives. Thoſe marriages which are not ſolemnized according to the order of the church, are termed clandeſtine. Notwithſtanding that clandeſtine marriages are equally binding with ſolemn ones, certain penalties are impoſed upon the parties, who thereby act contrary to the order of law; theſe are, impriſonment for three months and a penalty upon the parties, with perpetual baniſhment or other arbitrary puniſhment upon the perſon that ſolemnizeth the marriage. Of old, the parties loſt their reſpective intereſts of *jus mariti* and *jus relictæ*; but that afterwards was altered. Perſons reſiding in *Scotland*, who marry in *England* or *Ireland*, without proclamation of banns in due courſe, are ſubject to the pains of clandeſtine marriages. And the witneſſes to an irregular marriage are ſubject to a fine."

But whether clandeſtine marriages in *Scotland*, of *Engliſh* parties, who reſort thither to evade the *Engliſh* law, ſhall be ſuſtained in *England*, hath been doubted. And very learned men have queſtioned, notwithſtanding that ſuch marriages are valid by the law of *Scotland*, whether they are effectual in *England*. Where parties are bound, by the laws of their own country, to execute any important act or contract with certain ſolemnities; it is doubted whether they can elude their own law, by going purpoſely to another country where ſuch ſolemnities are not eſſential, and then returning immediately when the act is done. It is a queſtion of public law; and the moſt celebrated writers on public law have holden, that ſuch an act is fraudulent; it is *fraudem facere legi*, which the laws of all nations diſallow. In the caſe of *Robinſon* and *Bland*, *M.* 1 *G.* 3. which was upon a ſecurity given in *France* for money there loſt at play, wherein the locality of the tranſaction came in queſtion, there is an *obiter* obſervation of lord *Mansfield* very remarkable. "As to the money won at play. By the rule of the law of *England*, no action can be maintained for it. To this it has been objected, that the contract was made in *France*: Therefore the law of *France* muſt prevail,

prevail, and be the rule of determination; by which law, it is alledged, that the money is there recoverable before the marſhals of *France*, who can inforce obedience to their ſentences by impriſonment. I admit that there are many caſes, where the law of the place of the tranſaction ſhall be the rule: And the law of *England* is as liberal in this reſpect, as other laws are. It has been laid down at the bar, that a marriage in a foreign country muſt be governed by the law of that country where the marriage was had. Which, in general, is true. But the marriages in *Scotland*, of perſons going from hence for that purpoſe, were inſtanced by way of example. *They* may come under a very different conſideration; according to the opinion of *Huberus*, p. 33. and other writers. No ſuch caſe hath yet been litigated in *England*, except one, of a marriage at *Oſtend*; which came before lord *Hardwicke*; who ordered it to be tried in the eccleſiaſtical court: But the young man came of age; and the parties were married over again; and ſo the matter was never brought to a trial." *Burr. Manſf* 1079.

But in *Buller*'s Law of *Niſi prius*, p. 113. there is a ſhort note of a cauſe wherein this point was afterwards determined, upon an appeal to the delegates; *viz.* "*Compton* and *Bearcroft*, 1 *Dec.* 1768. The appellant and reſpondent, both *Engliſh* ſubjects, and the appellant being under age, ran away without the conſent of her guardian, and were married in *Scotland*; and on a ſuit brought in the ſpiritual court to annul the marriage, it was holden that the marriage was good."

What ſhall be deemed ſufficient evidence of a marriage, as to a ſettlement.

2. *T.* 2 *G.* 3. *Stockland* and *Chardland*. *John Moes* and *Elizabeth Maſon*, father and mother of the pauper, being both reſident in the pariſh of *Chardland*, about the year 1723, went from thence together, declaring they were going to be married; and ſoon returned, declaring they had been married: and from thenceforward cohabited as man and wife for about 30 years, until the death of the ſaid *Elizabeth*. The pauper was born at *Chardland* in 1725, and there baptized, and his baptiſm regiſtred as the ſon of *John* and *Elizabeth Moes*. The ſaid *John* and *Elizabeth*, ſome years before the death of the ſaid *Elizabeth*, removed from the ſaid pariſh of *Chardland* to the pariſh of *Stockland*, and there acquired a ſettlement by renting a tenement of 50*l*. a year. They carried with them, from *Chardland* to *Stockland*, the ſaid pauper their ſon, whoſe ſettlement depended upon this queſtion, Whether the ſaid *John* and *Elizabeth*, the father and mother of the pauper, were to be conſidered as huſband and wife at the time of his birth? It was contended

contended at the ſeſſions, that the ſaid *John* and *Elizabeth* were never married; or if they were, that the ſaid *Elizabeth* had a former huſband then living. Concerning which, ſeveral witneſſes having been examined on both ſides, the ſaid *John Moes* the father was produced, in order to prove that he and the ſaid *Elizabeth* were never married, and that the ſuppoſed other huſband was then living. But the court refuſed to receive his teſtimony. And on conſideration of the evidence before the court, they were of opinion that the marriage of *John* and *Elizabeth* was ſufficiently proved, and that the pauper gained a ſettlement at *Stockland*, as part of their family, and diſcharged the order of the two juſtices for removing him to *Chardland*. It was moved to quaſh the order of ſeſſions. The objection was, that they ought to have admitted the father to give evidence of his never having been lawfully married. But lord *Mansfield* ſeemed to think, that 30 years cohabitation as man and wife was ſufficient proof to the juſtices to found an order of removal upon. However, a rule was made to ſhew cauſe. But on the laſt day of the term the objection was given up; and, by conſent, the order of ſeſſions was affirmed, and the recognizance diſcharged. *Burrow's Settl. Caſ.* 508.

E. 2 *G.* 3. *St. Devereux* and *Much Dewchurch*. The queſtion before the ſeſſions was, Whether the marriage of *John* and *Suſannh Meredith* was ſufficiently proved? One witneſs made oath, that he and another witneſs were preſent on the 7th day of *February* 1758, when a marriage was ſolemnized in the pariſh church of *St. Devereux* between the ſaid *John* and *Suſannah Meredith*, by the miniſter of the ſaid pariſh by banns. And it appearing to the ſaid ſeſſions, that the entry of the ſaid marriage in the regiſter book of the ſaid pariſh was made in manner following, *viz.* "1758. *John Meredith* and *Suſannah Jen-* "*kins* were married by banns," but neither the miniſter, parties, nor witneſſes ſigned the ſaid entry, and that no other entry of the ſaid marriage was ever made, they therefore were of opinion, that the marriage was not legally proved. On ſhewing cauſe, it was urged in ſupport of their opinion, that this appeared, upon the ſtate of the caſe to be a void marriage. For although the omiſſion of banns, was originally only an offence againſt the eccleſiaſtical law; and even after the 7 & 8 *W. c.* 35. *ſ.* 2. the miniſter and clerk and man married without licence or banns were only ſubject to a penalty; yet ſince the act of the 26 *G.* 2. *c.* 33. an entry of this, properly ſigned, is become ſo eſſential a circumſtance, that without it the marriage

marriage itſelf is null and void. But the court were of a different opinion. And lord *Mansfield* ſaid, It was not incumbent on the perſons married, to prove that the banns were publiſhed, nor doth the entry directed to be made affect the validity of the marriage. In a ſuit perhaps in the eccleſiaſtical court for jactitation of marriage, it may be neceſſary to prove that all the ſolemnities of the marriage act have been punctually and regularly complied with: But God forbid that in other caſes (the legitimacy of children and the like) the uſual preſumptive proofs of marriage ſhould be taken away by this ſtatute. It was canvaſſed in parliament, at the time when the act was made, and univerſally agreed by all whoſe opinions were worth having, that it would not become neceſſary to prove the publication of banns. But at the ſame time he declared, that it was a matter of great publick concern, for the preſervation of pedigrees (which were now become very difficult to prove): And the entry ought to have been made according to the directions of the act. He went ſo far as to declare, that an information ought to be granted by the court againſt the miniſter for omitting it, if it ſhould appear clearly that it was owing to his neglect; and that ſuch information ſhould be proſecuted by the attorney general at the king's expence; which he did not doubt would be readily directed, upon the recommendation of the court. And he ordered the fact to be further inquired into. And it came out, that a regular entry had been made; and that which was produced to the juſtices, was only a minute or memorandum. So the miniſter was juſtified. *Burrow's Settl. Caſ.* 506. *Black. Rep.* 367.

Finally, in the caſe of *Morris* and *Miller*, *E.* 7 *G.* 3. On an action for criminal converſation with the plaintiff's wife, the queſtion was, whether, to ſupport the action, there muſt not be proof of an actual marriage? The fact was, they were married at *May-fair* chapel. The regiſter or books could not be admitted in evidence. *Keith*, who married them, was tranſported; and the clerk who was preſent at the marriage, was dead. So that the plaintiff could not prove the actual marriage by any evidence. But the counſel for the plaintiff proved articles between the man and his wife, made after marriage, for ſettling of the wife's eſtate, with the privity of relations on both ſides. They proved cohabitation, name, and reception of her by every one as his wife, and inſiſted that this evidence is admiſſible; and that lately in ejectment, before lord *Mansfield*, this ſort of evidence was offered and received. Unto which, lord *Mansfield* ſaid, It certainly may be done ſo, in

in all cases except two: One is in prosecutions for bigamy; and this case (if such proof cannot be here received) is the other. It was proved further, that the defendant *Miller* confessed to the landlord of the lodgings, that she was captain *Morris*'s wife, and that he the defendant had committed adultery with her: And confession is the strongest evidence.——Lord *Mansfield*: I do not, at present, remember any action for criminal conversation, when an actual marriage was not proved. Proof of actual marriage is always used and understood in opposition to proof by cohabitation, reputation, and other circumstances from which a marriage may be inferred: But we will take time to consider of it. Afterwards, he delivered the resolution of the court: In these actions there must be proof of a marriage, in fact as contrasted to cohabitation and reputation of marriage arising from thence. Perhaps there need not be strict proof from the register, or by a person present; but strong evidence must be had of the fact, as by a person present at the wedding dinner, if the register be burned, and the minister and clerk are dead. The case of bigamy is stronger than this. And on an indictment for that offence, *Denison* justice, on the *Norfolk* circuit, ruled, that tho' a lawful canonical marriage need not be proved, yet a marriage in fact (whether regular or not) must be shewn. But except in these two cases, I know of none, where reputation is not a good proof of marriage. *Burr. Mansf.* 2057. *Black. Rep.* 632.

Wife shall follow the husband's settlement.

3. It seemeth to be a good general rule, that a woman marrying a husband who hath a known settlement, shall follow the husband's settlement. And although in the case of *Uphottery* and *Dunkswell*, *M.* 1 *G.* it was held, that the wife shall not gain a settlement with the husband, until she hath lived with him 40 days unremoveable as part of his family; yet afterwards, in the case of *K.* and *Pincehorton*, *M.* 3 *G.* it was agreed by the court, that a wife is to be sent to her husband's settlement, though she never lived with him there. And in the case of *St. Giles*'s and *Eversley Blackwater*, *H.* 10 *G.* the widow was removed to the deceased husband's settlement, though she had never been there; and it was ruled by all the court, that the removal was good, and that she must be sent to the last legal settlement of her husband, having acquired no other settlement since his death. *Cas. of S.* 89. 1 *Sess. C.* 10. 105. *V.* 2. 112.

Wife can gain no settlement without her husband.

4. It seemeth also to be agreed, that a wife can gain no settlement separate and distinct from her husband, during the coverture. As in the case of *Aythrop Roding* and *White Roding*, *M.* 30 *G.* 2. (hereafter following); where the wife,

wife, after the husband was run away, went to live upon a copyhold of her husband's, where her husband had never resided: it was held, that although she might not be removed from thence, yet (her husband being living) she could not thereby gain a settlement.

Case where the husband hath no settlement.

5. It seemeth also to be agreed, that a woman marrying a husband that hath no known settlement, doth not lose her former settlement which she had before marriage. But the great point of difference hath been, whether such settlement continues to her during the coverture, or it is suspended during her coverture, and only revives after the husband's death. Which point includes in it this question, Whether the parish where the woman was last legally settled before marriage, shall, by barely proving such marriage, avoid the settlement with them during the husband's life? or whether in order to avoid such settlement, it is not also necessary for them to prove, that such woman hath gained another settlement, that is to say, that the husband hath a settlement, and where?

In relation to which case, where the husband hath no known settlement, it hath been adjudged as follows:

E. 2 *G. St. Giles*'s and *St. Margaret*'s. A woman marries a foreigner; and her husband dies. By the court: She must be sent to the place of her settlement before marriage. 1 *Sess. C.* 97.

H. 12 *G. K.* and *Chidingstone.* It was stated, that a single woman, settled at *Chidingstone*, was married to a man who is since dead, but his settlement did not appear. And by the Court, Her settlement before marriage stands. *Str.* 683.

M. 1 *G. Uphottery* and *Dunkswell.* A woman is settled in *Dunkswell*; and afterwards marries a vagrant, whose settlement doth not appear. But he goes and lives in *Uphottery*, and dies there. Two justices remove the widow to *Dunkswell*, where she was settled before marriage. And by the court: Where it appears that the husband in his lifetime had no legal settlement as can be found, there the marriage shall not put her in a worse condition than she was before, and is all one as the case of a *Scotchman* and a foreigner, and she shall not lose her former settlement. *Cas. of S.* 89. 1 *Sess. C.* 80.

Hitherto the cases seem to be agreed, being that the husband is dead. But the difficulty is, where the husband is supposed to be living. And in relation to this point, the following strong cases have been adjudged.

M. 12 *An. Dunsfold* and *Wilsborough Green.* A woman who was settled at *Wilsborough*, marries *Archibald Player*, a *Scotch-*

a *Scotchman*, who had gained no ſettlement in *England*. Two juſtices removed her from *Dunsfold* to *Wilſborough*, the place of her ſettlement before marriage. Exception; this is a married woman, and by her marriage ſhe ought to be ſettled where her huſband was, and this cannot be right; for if the juſtices may ſend away a wife, it is making a divorce between huſband and wife; and if he is a *Scotchman*, they ought to ſend her, as part of his family, to the bordering counties of *Scotland*, according to the act of the 39 *El. c.* 4. *ſ.* 6. The court held, though ſhe was a married woman, yet if her huſband had no ſettlement, ſhe could not gain any other ſettlement than ſhe had before marriage; and as for divorce it was none; for the huſband might come to her as well at *Wilſborough Green* as at *Dunsfold*. Foley. 249. Caſ. of S. 31.

Note; the act of the 39 *El.* only ſays, that the *Scotchman* himſelf, if a vagrant, may be ſo ſent; but ſays nothing of his family.

M. 3 *G. St. Giles*'s and *St. Margaret*'s. *Sarah Etherington* was ſettled at *St. Giles*'s; and marries an *Iriſhman*. By the court: The marriage will not put her in a worſe condition than ſhe was before; and they held that ſhe continued her ſettlement, notwithſtanding her marriage. *Caſ. of S.* 98.

H. 12 *G. K.* and *Weſterham*. The order ſpecially ſtated by the ſeſſions was this: It appeared to the court, by the teſtimony of *Elizabeth Pinchen*, that the ſaid *Elizabeth Pinchen* was, at the time the ſaid order was made, a married woman, and that her huſband was one *Thomas Pinchen*, who was born in *Wiltſhire*, but in what place or pariſh he had a ſettlement, he never informed her, nor doth ſhe know; but that he is run away, and ſtill living, for what ſhe knows. By the court: Whether the huſband be living or dead, ſignifies nothing. For unleſs it appears that he has a ſettlement, the woman muſt be ſent to the place of her ſettlement before marriage: for ſuppoſing the huſband was born upon the high ſeas, or in *Ireland*, or a foreign country, if the woman might not be ſent to the place of her ſettlement before marriage, ſhe might be ſtarved. *Foley.* 252. *Bur. Settl. Caſ.* 368.

On the contrary, *H.* 12 *G.* 2. *Stretford* and *Norton*, the caſe was thus: An *Engliſh* woman married an *Iriſh* man who had no ſettlement in *England*. He ran away; two juſtices remove the wife to the place of her ſettlement before marriage. And it was urged, that there could be no pretence that this ſeparated her from her huſband; and if ſhe cannot be ſent thither, ſhe can be ſent no where.

But by *Lee* Ch. J. It is now a ſettled point, that by the marriage the woman's ſettlement is ſuſpended, whether the huſband has or has not a ſettlement; for otherwiſe the juſtices might ſeparate huſband and wife; and therefore to make the order good, it ſhould have appeared that the man was dead.—And the order was quaſhed by the whole court. And there were cited theſe two following caſes, *viz. T.* 1 *G. Hanway* and *Marſton*. It was there declared by the Ch. J. that the ſettlement of a woman, who married a vagrant, is ſuſpended during the coverture; and that as the huſband cannot be ſent to the place of the wife's ſettlement, ſo neither can the wife herſelf, becauſe an huſband and wife, being as it were but one perſon, cannot be parted. *T.* 9 *G. Shadwell* and *St. John's Wapping*. One *Ridley*, a vagrant, having no ſettlement, married a woman who had a ſettlement in *St. John's Wapping*, and had four children by her born in *Stepney*. And it was held, that the children were not ſettled in the place where they were born, but where the wife had a ſettlement; but that this was ſuſpended during the coverture, and it revived again upon the death of the huſband. *Andr.* 307. 2 *Seſſ. C.* 185. 19 *Viner.* 376. *Burrow's Settl. Caſ.* 122 †.

Finally, in the caſe of *St. John's Wapping* and *St. Botolph's Biſhopſgate*, *H.* 28 *G.* 2. it was adjudged as follows: *Eleanor Kinley* having gained a ſettlement in *St. Botolph's*

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† Sir *James Burrow* ſays, he doth not find the caſe of *Shadwell* and *St. John's Wapping* in any printed book or manuſcript; But it ſeems (he ſays) to be the ſame caſe which he had heard reported in the form of a catch, to the following effect:

A woman having a ſettlement
Married a man with none:
The queſtion was, he being dead,
If that ſhe had, was gone.
Quoth Sir *John Pratt* *——Her ſettlement
Suſpended did remain,
Living the huſband: But, him dead,
It doth revive again.

Chorus of Puiſne Judges——

Living the huſband: But, him dead,
It doth revive again.

* Then lord chief juſtice.

Botolph's pariſh by hiring and ſervice, afterwards married *Thomas Kinley* an *Iriſhman*, who had no ſettlement in *England*. About two years ago, the huſband entred on board a man of war bound for the *Weſt Indies*, but *Eleanor* about two months ago heard he was living; and the queſtion was, Whether her ſettlement which ſhe had before marriage ceaſed, or was in ſuſpenſe, during the coverture, and ſhe ſhould be looked upon as a caſual poor; or ſhe ſhould be ſent to the place of her ſettlement before marriage? After full conſideration, *Ryder* Ch. J. delivered the opinion of the court: 1. It is certain *St. Botolph*'s was once her ſettlement, and that is not diſputed. 2. That ſettlement continues till ſhe gains a new one. 3. That ſhe has never yet gained a new one. To the ſecond point he ſaid, a ſettlement is a permanent thing; it laſts during life, or till a new one is acquired: and there is no caſe to be found, where it has been determined or ceaſed ſooner. Neither can any perſon diſcharge his own ſettlement ſooner, or by any other means. The queſtion is not, Whether ſhe gained any new ſettlement by marriage, but whether her old ſettlement was diſcontinued by her marriage with a perſon that had none? It is abſurd to ſay, ſhe ſhall loſe her own, without getting another. The objection that the huſband and wife would be ſeparated, is of no weight here; for they are ſeparated already. I muſt own the caſe of *Stretford* and *Norton* is not to be diſtinguiſhed from the preſent, and is againſt our preſent opinion. To be ſure we muſt have great regard to former reſolutions in this court; but we muſt judge upon the caſes before us. How that caſe came to be determined ſo, I do not know, but there are at leaſt four authorities the other way (which perhaps might not then be cited), and we think the reaſon is with the old caſes. The huſband may come to her in one pariſh as well as the other, for he will be a vagrant in both, and liable to be treated as ſuch. The wife's ſettlement remains; having never been determined but only, as it were, ſuſpended, during the time that ſhe continued under the power and protection of her huſband, and was maintained and ſupported by him. *Burrow's Settl. Caſ.* 367.

Whether the wife may be removed without the huſband.

6. *H.* 9 *G. St. Michael*'s and *Nunny*. Order of removal, reciting that the wife of a poor perſon who is now living, had intruded, and was likely to become chargeable, and that the place of her ſettlement was in the pariſh of *St. Michael*, ſhe is therefore removed thither. It was moved to quaſh the order, becauſe it did not appear,

the husband was at the time of the removal in the parish of *St. Michael*, so that it may be they sent the wife away from the husband. But by the court: We cannot intend he was not; if he was in the parish from which she was sent, that indeed would vitiate the order; for the wife cannot be removed from her husband: but as neither of of these facts appear against the order, to satisfy us that it is bad, we are not to presume it to be so; and therefore it must be confirmed. *Str.* 544. *Bur. Set. Cas.* 815.

M. 14 *G.* 2. *Ironacton* and *Painewick*. Upon complaint made by the churchwardens and overseers of *Painewick*, that *Mary* the wife of *William King* had intruded into *Painewick*, two justices removed her to *Ironacton*, which they adjudged to be the last legal settlement of the husband. Upon appeal, the sessions confirm that order, It was moved to quash these orders. The objection was, that the wife was removed without the husband, and that this amounts to a divorce between the man and his wife. But the court over-ruled the objection; for how doth it appear that the husband was not at *Ironacton* at that time? The court will not suppose it to be wrong, unless it appears so. The intrusion complained of was only by the wife, and they could not remove the husband when he was not complained of. *Burrow's Settl. Cas.* 153.

H. 14 *G.* 2. *K.* and *Higher Walton*. Two justices make an order to remove *Mary Bennet* wife of *Samuel Bennet*, to *Higher Walton*, which they adjudge to be the place of her last legal settlement. And the sessions confirm that order. It was moved to quash these orders: for that it doth not appear, whether it was this woman's settlement in her own right, or in the right of her husband. And nothing shall be intended. Now, if it was not her settlement in right of her husband, the justices had no power to send her thither. By the court: It is adjudged to be her last legal settlement. And she could not be settled but where her husband was. And we are not to intend any thing to vitiate the order. Therefore we cannot intend that the husband's settlement was not at *Higher Walton*. And the motion was denied. *Burrow's Settl. Cas.* 162.

T. 15 *G.* 3. *Hoylandswain* and *Carleton*. Two justices remove *Johanna* wife of *Simon Mac Owen*, and their four children, from *Hoylandswain* to *Carleton*; stating in their order, that complaint was made to them by the churchwardens and overseers of the poor of *Hoylandswain*, that *Simon Mac Owen*, *Johanna* his wife, and *Mary*, *Margaret*, *Elizabeth*, and *John* their children, came to inhabit in *Hoylandswain*,

landſwain, not having gained a legal ſettlement there; and that the ſaid *Simon Mac Owen* is an *Iriſhman*, and hath done no act in *England* whereby to gain a legal ſettlement, and that his ſaid wife and children are actually chargeable to *Hoylandſwain*: which complaint they adjudge to be true, and that the laſt legal ſettlement of the ſaid *Johanna* the wife of the ſaid *Simon Mac Owen* and of their ſaid children is in *Carleton*; and therefore they remove them thither. The ſeſſions upon appeal confirm that order, and ſtate ſpecially: That *John Tyas*, father of the ſaid *Johanna*, in the year 1727, came with a certificate from *Carleton* to reſide in *Hoylandſwain*, and during his reſidence there, his daughter *Johanna* was born, and continued to live with him there until ſhe was upwards of 21 years of age: That ſhe afterwards took a houſe at *Hoylandſwain*, and reſided therein until ſhe was married to the ſaid *Simon Mac Owen*; who, upon his marriage, went to reſide with the ſaid *Johanna* his wife in her ſaid hired houſe, and continued to reſide with her therein from the time of their ſaid marriage, which was in *September* 1766, until ſhe and the ſaid children were removed under the ſaid order, from the ſaid *Simon Mac Owen*, and from his ſaid dwelling-houſe wherein he then lived, and ſtill continues to reſide: That the ſaid *Simon*, from the time of his ſaid marriage, followed the buſineſs of a cloth-dreſſer, and thereby maintained himſelf, and his ſaid wife and family, until a little time before the ſaid order of removal was made; when his ſaid wife and children being taken ill of a fever, ſhe applied to the overſeers of *Hoylandſwain* for relief, and ſhe was not recovered at the time ſhe was removed, and could hardly ride.——It was moved to quaſh theſe orders, and objected, that this would occaſion a ſeparation between huſband and wife; and amount, in effect, to a divorce. The huſband continues to live and reſide in *Hoylandſwain*, and acquires his living there by his labour and induſtry. His wife cannot be ſent from the pariſh where he is reſident, as was agreed in the caſe of *St. Michael's* and *Nunny*.——On ſhewing cauſe, it was argued, that by the certificate act, the pariſh granting the certificate is bound to receive the perſon certified for, together with his or her family, whenever they ſhall happen to become chargeable: That *Johanna* has gained no ſettlement ſince her birth; ſhe could gain none by her marriage for her huſband had none himſelf. Her former ſettlement is not ſuſpended by her intermarriage with a man who had none. It remains, and is communicated to her children. And the ſending her to *Carleton* doth not ſeparate her from her huſband; for he may go to her there. He ought not

to remain in *Hoylandſwain*. He hath as much right to be in one of theſe places as in the other. And for this was cited the caſe of *St. Botolph*'s *Biſhopſgate*. — But the court were clear, that the removal was wrong. It is not like the caſe of the huſband being dead, or having left his wife. Here, the huſband is alive; reſides at *Hoylandſwain*; follows the buſineſs of a cloth-dreſſer there; and maintained his family by it for many years, till they were taken ill of this temporary fever, which obliged them to apply for relief. The pariſh have had the benefit of this labour nine years. The man is ſettled in a houſe, and carries on buſineſs in this place. There may be no buſineſs for a cloth-dreſſer at *Carleton* at all: Or this man may have no acquaintance there. He may ſtarve there, though he could maintain his family at *Hoylandſwain*. It is a cruel behaviour: — And both orders were quaſhed. *Burrow's Settl. Caſ.* 813.

H. 18 *G.* 3. *Cheſhunt* and *Hinckſworth*. Two juſtices removed *Sarah*, calling her in the order, the wife of *Joſeph Griffin*, and five of her children, from *Cheſhunt* to *Hinckſworth*, in the huſband's abſence, and without having examined him. The order was not appealed againſt. The huſband ſoon after went to his wife and children at *Hinckſworth*, from whence they were all ſent back under a new order to *Cheſhunt*. The pariſh of *Cheſhunt* appealed againſt this order, and producing the former order, inſiſted it was concluſive as to the huſband, as well as the wife and children. The ſeſſions however, after hearing evidence as to *Griffin*'s ſettlement, confirmed the new order as to him, and quaſhed it as to the wife and children. The wife then went back with her children to her huſband at *Cheſhunt*. After which, a third order was made, removing the children again to *Cheſhunt*. This was likewiſe appealed againſt, and confirmed as to all but two of the children who were under ſeven years of age, as to whom it was quaſhed. — By lord *Mansfield*: There is nothing in this caſe. It is admitted, that if they had put into the firſt order, that it was the huſband's ſettlement, that would have been concluſive; and the omiſſion makes no difference. The general rule is, that the huſband's ſettlement is the ſettlement of the wife. There are ſome ſpecial exceptions; as where the huſband is beyond ſea. But the preſumption is in favour of the general rule, and if this had been the caſe of an exception, it ought to have been ſtated. — And the rule was made abſolute to quaſh all the orders but the firſt. *Douglas.* 46.

M. 19 *G.* 3. *Ewell* and *Leigh*. Two juſtices removed a married woman and her child, from *Ewell* to *Leigh*, in the

the abſence of the huſband. On appeal this order was quaſhed. The huſband afterwards returning to *Ewell*, he, together with the wife and child, were removed under a new order to *Leigh*; which laſt order the ſeſſions confirmed. But upon a *certiorari* and a rule to ſhew cauſe why it ſhould not be quaſhed, the counſel gave it up, as not to be ſupported ſince the determination of *Cheſhunt* and *Hinckſworth*. Douglas. 45.

Marriage fraudulently procured.

7. Although it is generally true, that no ſettlement ſhall be good, which is brought about by fraud or practice; yet it ſeemeth that the rule faileth in this caſe, and that if the marriage take effect, the ſettlement is good: for the following caſes do proceed upon ſuch ſuppoſition.

M. 11. *G. K.* and *Edwards*. The overſeers were indicted for a conſpiracy, in giving a ſmall ſum of money to a poor man of another pariſh, for marrying a poor lame woman of their own pariſh, and ſo by this contrivance conſpiring to ſettle the woman in the other pariſh, where the huſband was ſettled: By the court; If there is a conſpiracy, to let lands of 10l a year to a poor man in order to gain him a ſettlement, or to make a certificate man a pariſh officer, or to ſend a woman big of a baſtard child into another pariſh to be delivered there, and ſo to charge the pariſh with the child, theſe are certainly crimes indictable. But this indictment was quaſhed, for want of averment, that the woman was laſt legally ſettled in the pariſh relieved by her marriage. 8 *Mod.* 321. 1 *Seſſ. C.* 165.

H. 6 *G.* 2. *K.* and *Parkins*. A ſingle woman of *Studley*, big with child of a baſtard, was ſent back to *Studley*. *Parkins*, overſeer of *Studley*, threatened with all the ſeverity of the law, to force her to marry a ſtranger of another pariſh, againſt both his and her conſent, he giving five guineas to the huſband, and keeping him in liquor. By the court; Shew cauſe why information ſhould not go. 1 *Seſſ. C.* 176.

M. 17 *G.* 2. *K.* and *Watſon*. An information was granted againſt *Watſon* and others, for procuring one *Vine* a ſoldier, who had a ſettlement in the pariſh of *Brill*, to marry a poor woman who was an idiot, and chargeable to the pariſh of *Dorton*, by giving *Vine* 10l and a fat hog for marrying her, whereby ſhe became chargeable to the ſaid pariſh of *Brill*. 1 Wilſon. 41.

T. 7 *G.* 3. *K.* and *Tarrant*. On ſhewing cauſe why an information ſhould not be granted againſt an overſeer of the pariſh of *Hewiſh*, for procuring one *Richard Few*, a poor man of the pariſh of *Wilcot*, to marry *Elizabeth Swanton* a ſingle woman with child of a baſtard, in order to get

the baſtard ſettled in the pariſh where the huſband was ſettled :——The rule was made abſolute for an information. *Burr. Manſf.* 2106.

viii. Of ſettlement by continuing 40 days after notice.

By the 13 & 14 *C.* 2. *c.* 12. *On complaint within 40 days after any perſon ſhall come to ſettle in any tenement under 10 l a year, two juſtices may remove him to the place where he was laſt legally ſettled for 40 days.*

But by the 1 *J.* 2. *c.* 17. *The 40 days continuance of ſuch perſon in a pariſh, intended by the ſaid act to make a ſettlement, ſhall be accounted from the time of his delivering notice in writing, of the houſe of his abode, and the number of his family, if he have any, to one of the churchwardens or overſeers of the pariſh to which he ſhall remove.* ſ. 3.

And by the 3 *W.* *c.* 11. *The ſaid 40 days continuance of ſuch perſon in a pariſh or town, intended by the ſaid acts to make a ſettlement, ſhall be accounted from the publication of a notice in writing, which he ſhall deliver, of the houſe of his abode, and the number of his family, if he have any, to a churchwarden or overſeer. Which ſaid notice in writing, the ſaid churchwarden or overſeer ſhall read, or cauſe to be read, publickly, immediately after divine ſervice, in the church or chapel, on the next Lord's day, when there ſhall be divine ſervice in the ſame. And the ſaid churchwarden or overſeer ſhall regiſter, or cauſe to be regiſtred, the ſaid notice in writing, in the book kept for the poor's account.* ſ. 3.

And *if any churchwarden or overſeer ſhall refuſe or neglect to read, or cauſe to be read, ſuch notice in writing as aforeſaid, he ſhall (on proof thereof by the oath of two witneſſes before one juſtice) forfeit for every offence 40 s to the party grieved, by diſtreſs, by warrant directed to the conſtable of the pariſh or town where the offender dwells; and for want of ſufficient diſtreſs, the ſaid juſtice ſhall commit him to the common gaol for one month. And if any churchwarden or overſeer ſhall refuſe or neglect to regiſter, or cauſe to be regiſtred, ſuch notice in writing; he ſhall, on the like conviction, forfeit 40 s, to the uſe of the poor of the pariſh or town where the offender dwells, to be levied as aforeſaid; and for want of ſufficient diſtreſs, then the ſaid juſtice ſhall commit him as aforeſaid, for the time aforeſaid.* ſ. 5.

After any perſon ſhall come to ſettle] But no ſoldier, ſeaman, ſhipwright, or other artificer, or workman in his majeſty's ſervice ſhall have any ſettlement in any pariſh, port-

port-town, or other town, by delivering and publication of notice in writing, unleſs the ſame be after a diſmiſſion out of the ſervice. *ſ.* 4.

In any tenement under 10*l a year*] But this hath been always underſtood of perſons coming to ſettle upon ſuch tenement, as farmers thereof, and not where the ſame is their own proper eſtate; and therefore a man's coming to ſettle upon his own eſtate is not within the act.

Where he was laſt legally ſettled for 40 *days*] *H.* 10 *G.* Caſe of *Circenſter*. It was held, that living 40 days ſucceſſively was not neceſſary; and Mr. J. *Forteſcue* ſaid, that living 40 days off and on, is making the caſe ſtronger than living 40 days together in a pariſh. 2 *Seſſ. C.* 40. *Str.* 579.

And *H.* 12 *G.* 2. *Sowton* and *Sydbury*. It was admitted by the counſel, and held by the court as a point indiſputable, that it is not neceſſary upon this ſtatute, that the inhabitancy ſhall be for 40 days ſucceſſively. *Andr.* 345.

Notice in writing] But perſons executing a publick annual office, or paying pariſh rates, or being ſervants for a year, or apprentices by indenture, ſhall thereby be ſettled without notice in writing. 3 *W. c.* 11. *ſ.* 6, 7, 8.

And in general, all perſons not removeable may become ſettled equally without giving notice as with it, for the notice is only intended where the perſon is removeable; for if he is not removeable, the notice is to no purpoſe.

In writing] *H.* 3 *G.* 2. *Aldenham* and *Abbots Langley*. Upon a ſpecial order of ſeſſions, it was ſtated, that a poor perſon forty years ago came into a pariſh and lived there ever ſince; that he attended the leet, amended the highways, had a pew in the church, five children, and did watch and ward. But by the court, Thoſe are not annual offices in the pariſh, and the 1 *J.* 2. *c.* 17. was purpoſely made to avoid theſe conſtructive notices, and requires notice in writing; and therefore they held it no ſettlement. *Str.* 853.

H. 8. *W. Dalbury* and *Foſton*. A perſon exerciſed the trade of a blackſmith, was publickly employed by the pariſhioners, by the bailiff of the lord of the manor, the vicar, and the juſtice. The queſtion was, Whether this publick way of living was not tantamount to notice in writing, which was only deſigned to prevent clandeſtine entries and living? By the court: This might perhaps have

have ſatisfied the ſtatute of the 1 *J.* 2. but the 3 *W.* hath particularized the notice, and what ſhall be tantamount to it, and what not; but this is not among the particulars of the ſtatute, and therefore is not ſuch notice as the law requires. For this being an explanatory law, the court cannot carry the explanation farther than the ſtatute itſelf hath done, though in an original law the court will make conſtruction according to equity. *Carth.* 369. 2 *Salk.* 476. *Foley.* 114.

Publication of the notice] In the caſe of *K.* and *Chertſey.* The banns of matrimony of a poor perſon were publiſhed in the church; and it was inſiſted, that this was a notice ſufficient, being in writing, and publiſhed in the church: But by the court; This is not ſufficient; for the other requiſites by the 3 *W.* muſt be obſerved; and that being an explanatory act, cannot be taken by equity. 5 *Mod.* 454.

After all, this kind of ſettlement, by continuing 40 days after publication of notice in writing, is very ſeldom obtained; and the deſign of the acts is not ſo much for the gaining of ſettlements, as for the avoiding of them, by perſons coming into a pariſh clandeſtinely: For the giving of notice is only putting a force upon the pariſh to remove. But if a perſon's ſituation is ſuch, that it is doubtful whether he is actually removeable or not, he ſhall by giving of notice compel the pariſh either to allow him a ſettlement unconteſted, by ſuffering him to continue 40 days; or, by removing him, to try the right.

ix. Of ſettlement by paying pariſh rates.

By the 13 & 14 *C.* 2. *c.* 12. *Forty days inhabitancy ſhall gain a ſettlement*; By the 1 *J.* 2. *c.* 17. *Such* 40 *days are to be reckoned from the delivering of notice in writing*; And by the 3 *W. c.* 11. *from the publication of ſuch notice in the church.*

But if any perſon who ſhall come to inhabit in any town or pariſh, ſhall be charged with, and pay his ſhare, towards the public taxes or levies of the ſaid town or pariſh, he ſhall be adjudged to have a legal ſettlement in the ſame, though no ſuch notice in writing be delivered and publiſhed. 3 W. c. 11. ſ. 6.

But by the 9 & 10 *W. c.* 11. *Perſons reſiding under a certificate ſhall gain no ſettlement by being rated to and paying any ſuch levies, taxes, or aſſeſſments.*

Shall

Shall be charged with and pay] *M.* 13 *G. Sealon Tongall* and *Worpleſdon.* The *landlord* was rated to the poor for the tenement, as being in his hands, and the *tenant* paid the rate. By the court: The tenant doth not gain a ſettlement, unleſs he be both rated and pay. *Foley.* 128. 2 *Seſſ. C.* 122.

M. 9 *G.* 2. *Sarrat* and *Bovington.* The landlord, who never occupied the houſe, was charged to the poor rate; but the tenant, on demand of the overſeers, paid it. By lord *Hardwicke* Ch. J. and the court: The charging is the principal act, as it infers notice to the pariſh; but both are neceſſary. The tenant muſt both be charged and pay, in order to gain a ſettlement. *Bur. Settl. Caſ.* 73.

M. 10 *G.* 2. *K.* and *Bramſhaw.* The landlord of the houſe who was alſo overſeer of the poor, was charged to the poor rate; but the tenant, on demand of the ſaid landlord, paid the rate. By the court: It is a ſettled point, that a perſon muſt be rated as well as pay; otherwiſe he gains no ſettlement. *Burrow's Sett. Caſ.* 98.

H. 10 *G.* 2. *Lower Walton* and *Appleton.* The father was rated, and the ſon who occupied the tenement paid the rate. By the court: This gained no ſettlement to the ſon. *Burrow's Sett. Caſ.* 100.

E. 4 *G.* 2. *Kingver* and *Kingſwinford.* A perſon rented a tenement, and paid all parochial taxes for the ſame in his own right, but was not rated in the pariſh books; but the name of *Richard Cotes* that rented the tenement before was kept in the levy books. By the court: This was no ſettlement. *Foley.* 120.

H. 21 *G.* 3. *Bailey* and *Heckmondwicke.* The mother occupied the houſe, and was rated and paid the taxes till the time of her death; after which, her ſon occupied the houſe and paid taxes, but the pariſh officers continued her name in the rate, knowing at the ſame time that ſhe was dead. By lord *Mansfield:* There muſt be ſuch a rating and paying, as to ſhew manifeſtly that the pariſh had notice. Here the rate was continued in the name of a dead perſon, whom the pariſh officers knew to be dead. The rate ought to be made on the occupier, and could be on no body elſe. This (he ſaid) was determined in the caſe of *K.* and *Walſall, M.* 18 *G.* 3. where the rate was "*Late* Lowbridge's. *Dougl.* 543.

But yet it hath been adjudged, that it is not neceſſary, that the party ſhould be taxed by name: As in the caſe of *St. Mary le more* and *Heavy-tree*; the rate was charged, not on the perſon, but on the houſe, and it was determined by the

the court, that this rating and payment made a ſettlement. 2 *Salk.* 478.

So in the caſe of *K.* and *Brightmen*, *E.* 8 *G.* Where a man lived in a place called *Hoſcoe*'s tenement, and paid taxes there by the name of the *occupier of Hoſcoe*'s; this was adjudged to be a ſufficient deſignation of the party, ſo as to gain a ſettlement. 8 *Mod.* 38. *Burrow, Mansfield.* 1062.

T. 31 *G.* 2. *Painſwick* and *Cirenceſter*. The pauper, *Iſaac Moorman*, took a houſe in *Cirenceſter*, of one *Thomas Clifford*, and agreed to pay the land tax, and poor taxes, and all other taxes. The rating was thus: "*Thomas Clif-* "*ford*, or tenant." *Moorman* paid the taxes; and the overſeers gave receipts to him in his own name. The landlord *Thomas Clifford* lived five miles off. It was urged, that *Iſaac Moorman* himſelf was not rated; being neither expreſly named, nor even perſonally hinted at. But the court was clearly of opinion, that this man was ſufficiently charged, to notify to the pariſh of *Cirenceſter* that he was an inhabitant there, and conſequently gained a ſettlement by payment of the rates ſo charged. *Burrow's Settl. Caſ.* 465.

E. 4 *G.* 3. *Openſhaw* and *Gorton*. *James Bowden*, ſettled at *Openſhaw*, took a houſe and two cloſes at *Gorton*, and the landlord was to pay all taxes and levies but the window-tax. The rating was thus: "*Bowden*'s." The landlord himſelf for ſome time paid the taxes; but in the laſt year, the landlord having ſome diſputes with the overſeers about his aſſeſſments, directed the overſeers to call upon his tenant *Bowden* for a poor rate and a church rate, and tell him that he his landlord ordered him to pay, and he would allow it to him out of his rent. The tenant paid the ſame, declaring he paid them for his landlord, and the overſeer ſaid he accepted them accordingly. But the landlord not being aſked by the tenant to allow it, did not allow it out of the rent till three quarters of a year after he left the eſtate (which was ſix days before the order of removal), when he repaid the money. It was objected, that in this caſe the tenant was neither rated nor paid. By lord *Mansfield* Ch. J. This was a tenant's tax. And he is aſſeſſed by name, *Bowden*'s. The agreement between his landlord and him, that the landlord ſhould pay it, is nothing to the pariſh. *Burrow's Settl. Caſ.* 522. *Black Rep.* 463.

T. 14 *G.* 3. *St. Olave*'s and *Warblington*. The pauper *William Freemantle*, being ſettled at *Warblington*, hired a houſe, and lived in *St. Olave*'s; where a church rate was made

made in 1773, wherein his name appeared thus: "*William* "*Freemantle* (to bring ſecurity) 1s 6d." And the ſaid ſum was received by the churchwarden. But the ſaid churchwarden (who had given this evidence) being croſs-examined, it appeared that the rate, when firſt made, was caſt up, and no ſum of money was ſet againſt the name of *William Freemantle*; but that afterwards, the churchwarden, being continued in his office for the next year, met the pauper, who told him "he had got a certificate from "*Warblington*, and had delivered it to the guardians of "the poor houſe:" That thereupon the ſaid churchwarden demanded of him, and received of him, the ſum of 1s 6d, and afterwards (on the ſame day) ſet down in figures the ſaid ſum in the rate made in 1773: But finding that the pauper had no ſuch certificate, he offered to return the money, and the pauper refuſed to accept it. By the court: This is not an informal rate, or irregular in the manner of making it. It is no rate at all. *Bur. Set. Caſ.* 787.

H. 15 *G.* 3. *Carſhalton* and *St. Magnus*. The pauper *Thomas Rummels*, living in a houſe at *Carſhalton* belonging to *William Bridges* eſquire, paid the land tax there. The aſſeſſment was, "Landlord rated, *William Bridges* eſquire, "for lands and tenements, in the occupation of *Thomas* "*Rummels*." The court were of opinion, that the landlord is the perſon rated, and not the tenant: That it was a very hard caſe upon the poor man; but they thought the objection too ſtrong to be got over. *Bur. Set. Caſ.* 809. And the like was determined in the caſe of *Mitcham* and *St. John Southwark*. T. 19 G. 2. Douglas. 214.

H. 21 *G.* 3. *Croydon* and *Corhampton*. The overſeers made a rate for 2s in the pound, in this form. "Rent 41 "Q. Certificate. Occupier, *Richard Goodiff*. Sum aſ-"ſeſſed ....." The overſeers demanded 8s for the rate, declaring he was aſſeſſed in that ſum for the relief of the poor. *Goodiff* objected, alledging that he was not a pariſhioner. The overſeer opened the rate book, and ſhewed him his name therein, and threatened to diſtrain for the 8s, if he did not pay it. *Goodiff*, on this, paid the money directly. In the afternoon of the ſame day, the overſeer returned, with the veſtry clerk, and offered to return the money, ſaying he had taken it by miſtake. *Goodiff* refuſed to receive it. The overſeer however left it, and went away: on which, *Goodiff* threw the money after him. It was objected, that here was no rating. There was no ſum put againſt *Goodiff*'s name. The pariſh knew he occupied the houſe, but they never intended to rate him. The miſtake of the overſeer (and corrected ſo ſoon) in ſuppoſing him

him rated when he was not, could not be binding upon the parish. But by lord *Mansfield:* There is no question in the case. The title of the rate is, Two shillings in the pound; and in the column of rent, *Goodiff*'s rent is 4l. This fixes his proportion of the rate. For what purpose was his name inserted, if not to rate him? And besides, he has paid it, and against his will; and he shall not have it in his power to say, upon reconsidering the matter, I have thought better of it, and you shall not gain a settlement. *Douglas.* 599.

His share] *M.* 10 *G* 3. *Stapleton* and *Stoney Stanton.* The son lived with his mother, as part of her family, and was rated and paid the tax for the estate which she occupied. It was objected, that this was not *his share*, but *his mother's share* of the public taxes or levies of the parish: The charge must be in proportion to what a man occupies: But this man occupied nothing. It was answered, that the words *his share* mean no more than such part or proportion of the whole tax, as was charged personally upon him.——The court were very clear, that he gained a settlement, by having been thus charged, and having paid what he was so chargedwith. *Bur. Set. Cas.* 649.

Of the publick taxes or levies] And though the rate be in form, or in the manner of making it, not strictly legal, but void; yet if the party be rated and pay to such a rate, he shall gain a settlement: For it would be hard, that one of the parish should come and say, that it was a void rate, being of their own making, and acquiesced under, and the money paid accordingly. 19 *Vin.* 386. *St. Giles's Cripplegate* and *St. Mary Newington.*

The publick taxes or levies of the said town or parish] By the 9 *G. c.* 7. No person who shall be assessed to the *scavenger*'s rate, or to the repairs of the *highways*, and shall duly pay the same, shall be deemed to be settled thereby. *s.* 6.

T. 9. *An.* Paying to the *county bridge* gains no settlement, for there all the county is liable, and he pays as one of the county, and not as an inhabitant of the parish or town where he lives. *Cases of S.* 1.

But perhaps the case may be altered in this respect, since the act of the 12 *G.* 2. *c.* 29. which charges a sum certain upon every division in proportion to their poor rate, towards the repair of bridges and other county expences, brought together by the said act into one general county rate; which before were collected separately, and (with respect to bridges) charged by the justices upon every individual.

dividual. Whereas now, if a man pays to the county rate, he eaſes the diviſion where he is aſſeſſed and pays, of ſo much as his aſſeſſment comes to. And there is in this caſe the ſame notoriety of his inhabitancy as in the caſe of the poor rate.

It hath been doubted, whether being aſſeſſed to and paying the *land tax* would gain a ſettlement. In the caſe of *Q.* and *St Michael's Cornhill*, *T.* 9 *An.* It was adjudged, that this was no ſettlement, becauſe it is a *county* tax; ſo of a *hundred*, or any other county tax. 19 *Viner.* 385.

But in the caſe of *Oakehampton* and *Kenton*, *E.* 7 *G.* 2. A tide-waiter reſided in *Kenton*, and had a ſalary. He was rated for this ſalary to the land tax in *Kenton*. It was paid for ſome time by himſelf, but repaid to him by the collector of the cuſtoms; and afterwards was paid by the collector. It was objected, that a taxation, without payment, gains no ſettlement: Then the queſtion is, Whether he paid his ſhare towards the public taxes and levies of the pariſh? And it is plain that he has not. For it was not his own money, but the money of the collector. By lord *Hardwicke* Ch. J. Suppoſe a landlord has agreed to reimburſe his tenant, would not the tenant be ſettled? This collector did not pay it to exonerate the pariſh, but to better the man's ſalary. And by the court; It hath been ſettled, that the land tax is a pariſh tax within the act; and his being taxed for his ſalary makes no difference. *Burrow's Settl. Caſ.* 5.

And in the caſe of *Bramley* and *Armley*, *H.* 9 *G.* 2. *John Cloſe*, the pauper, after his ſettlement in *Bramley*, removed with his family, and inhabited and farmed lands at *Armley*, for which he was charged and paid two quarterly payments to the land tax only. It was urged, that as the land tax is always allowed or repaid by the landlord, the payment thereof can gain no ſettlement to the tenant. By the court; It hath been a great doubt, whether in this reſpect the legiſlature did not mean parochial taxes. But this hath been long gotten over; and the land tax has been holden to be within the act, from the notice of inhabitancy that ariſes by the party's being aſſeſſed and paying it. *Burrow's Settl. Caſ.* 75.

So alſo in the caſe of *K.* and *Chidingfold*. *H.* 30 *G.* 2. It was moved to quaſh an order of ſeſſions, not ſtating the caſe, but merely the queſtion, Whether the tenant's paying the *land tax* (which was allowed to him again by his landlord) amounts to ſuch a notice, as ſhall gain the tenant a ſettlement? Which the ſeſſions held that it did not.

not. In ſupport of the motion, was cited the caſe of *Oakehampton* and *Kenton*, where a tide-waiter's being taxed to the land tax for his ſalary, was holden to be ſufficient notice ſo as thereby to gain a ſettlement, even tho' it was paid by the collector. And the aforeſaid caſe was cited of *Armley* and *Bramley*. On ſhewing cauſe, the counſel on the other ſide acknowledged, that they could not ſupport the order; the point being already fully ſettled by former determinations. And the rule for quaſhing the order of ſeſſions was made abſolute. *Burrow's Settl. Caſ.* 415.

And, finally, in the caſe of *Fulham* and *St. Margaret's Weſtminſter*, *M.* 33 *G.* 2. The tenant was aſſeſſed to and paid the land tax; which was allowed to him by his landlord, on ſettling his account with him for the rent. It was inſiſted, that it hath been often and fully ſettled, that this will gain a ſettlement. And upon that ground of its being a ſettled point, the court adjudged accordingly. *Burrow's Settlem. Caſ.* 488.

The difficulty ſeems to have been, for that the land tax is not an occupier's tax. It is chargeable upon the land. The tenant is to pay it, 'tis true; but, by the annual land tax acts, he is to deduct the ſame out of his rent to the landlord. So that properly the tenant doth not pay his ſhare, but his *landlord's* ſhare to the land tax. The caſe of a tide-waiter, or exciſeman, is ſomewhat different. For the officer's tax eaſeth the reſt of the inhabitants for ſo much in their aſſeſſment; and it is reaſonable that he who contributes to the pariſh ſtock ſhould be intitled to receive relief from thence. But it is no advantage to the pariſh, that the tenant pays the tax, and not the landlord. But the aforeſaid determinations have turned upon the point of notoriety, that the tenant's being aſſeſſed and paying ſhall be tantamount to notice in writing.

By the 21 *G.* 2. *c.* 10. Perſons aſſeſſed to and paying the *duties on houſes and windows*, ſhall not thereby gain a ſettlement.—And one reaſon may be, becauſe they do not thereby contribute any thing to the public ſtock of the pariſh. So alſo by the 18 *G.* 3. *c.* 26. payment of the duties granted by that act on houſes worth the yearly rent of 5 l and upwards, ſhall not gain a ſettlement.

x. Of ſettlement by ſerving a pariſh office.

By the 13 & 14 *C.* 2. *c.* 12. *Forty days inhabitancy ſhall gain a ſettlement:* By the 1 *J.* 2. *c.* 17. *Such* 40 *days are to*

to be reckoned from the delivering of notice in writing: And by the 3 *W.* c. 11. *they are to be reckoned from the publication of such notice in the church.*

But if any person who shall come to inhabit in any town or parish, shall for himself, and on his own account, execute any publick and annual office or charge in the said town or parish, during one whole year; he shall be adjudged to have a legal settlement in the same, though no such notice in writing be delivered and published. 3 W. c. 11. s. 6.

By the 9 & 10 *W.* c. 11. *No person who shall come into any parish by certificate, shall be adjudged by any act whatsoever, to have procured a legal settlement in such parish, unless he shall really and* bona fide *take a lease of a tenement of the yearly value of* 10 *l, or shall execute some annual office in such parish, being legally placed in such office.*

For himself and on his own account] Therefore a person sworn into and serving the office of constable, as deputy to another, doth not thereby gain a settlement. 19 *Viner.* 379. *Lothsme* and *Sheriff Hales.*

H. 4 *G.* 3. *Winterbourn* and *St Philip* and *Jacob.* The custom was for the constable to be presented by the jury at the leet. The jury presented *Richard Bayly*, esquire, who procured the pauper to serve for him, in order to gain the pauper a settlement. The pauper accordingly was sworn into the office by a justice, and served the same for a year; but was not presented thereto at the court leet, as constable in his own right. By the court clearly: He gained no settlement. *Burrow's Settl. Cas.* 520. *Black. Rep.* 452.

H. 9 *G.* 3. *Allcannings* and *Patney.* The house occupied by Mr. *Amor* being in turn to furnish a tithing-man for the parish of *Patney*, the leet jury presented him to that office. And he, by leave of the court leet, put in his place *Thomas Palmer*, a common labourer, an housekeeper, living in the same parish; who was sworn in accordingly at the said leet; and served the said office for a year: But Mr. *Amor* paid him all his expences attending the execution of it. ——By the court: *Palmer* gained no settlement in *Patney*; for, clearly, he served for *Amor*, and did not execute the office *for himself and on his own account.* Bur. Sett. Cas. 634.

Annual office] *H.* 9 *Ann. Gatton* and *Milwich.* A person being chosen *parish clerk* by the parson, served for several years, and received his fees and dues. By the court: It is a parish office, and has the care and custody of the ornaments of the church. 'Tis true, if he is poor, and has a family, they may remove him; for although he

came in by the parſon only, yet their not removing him implies their conſent and approbation; and by this conſent of theirs, the law adjudges him in by the concurrence of the pariſh. *Caſes of S.* 241. 2 *Salk.* 536. *Foley.* 123.

And in the caſe of *K.* and *St. Mary Berkhamſtead*, *E.* 8 *G.* 2. The court ſeemed to be of opinion, that the executing the office of a *pariſh clerk* is ſufficient for a certificate perſon to gain a ſettlement; for it is an *annual office* and more. 2 *Seſſ. C.* 182. And it is not neceſſary for a *pariſh clerk* to be licenſed by the Ordinary, in order to be legally placed in ſuch office. *Str.* 942.

T. 13 *G.* 3. *Helſington* and *Over*. Two juſtices by their order remove the reverend *John Langhorn* from *Helſington* in the county of *Weſtmorland*, to *Over* in the county of *Cheſter*. The ſeſſions, upon appeal, confirm that order, and ſtate ſpecially; That on the firſt day of *October* 1766, the vicarage of the pariſh of *Over* was ſequeſtred for three years, or till the biſhop ſhould releaſe the ſame: That on the twelfth day of the ſame *October*, the ſaid *John Langhorn* was ordained deacon by the biſhop of *Cheſter*, in order to ſupply the cure of *Over* during the ſequeſtration: That from the 15th of the ſaid month, to the 15th of *June* 1768, he by an exchange with the curate at *Acton*, reſided and did duty in the pariſh of *Acton*, but received his ſalary regularly from the ſequeſtrators of *Over*: That from the ſaid 15th of *June* 1768, to the firſt day of *October* 1769, he reſided and did duty as curate at *Over*, when the ſequeſtration ended: That it did not appear that he had any licence to the curacy of *Acton*. On ſhewing cauſe againſt quaſhing theſe orders, it was argued, that this office of curate or ſequeſtrator for three years, or till the biſhop ſhould releaſe the vicarage from the ſequeſtration, was a public annual office or charge in the pariſh, and was executed on his own account. It was conferred upon him under his own qualification of a deacon, and quite independent on the vicar of *Over*. And its being conditional, if the biſhop ſhould releaſe the ſequeſtration, is no objection; a conditional hiring would gain a ſettlement. Unto which it was anſwered, that this cannot be conſidered as executing an annual office or charge in the pariſh on his own account. It could not be annual; becauſe the ſequeſtration would be at an end, the very moment the debt had been paid. The curate alſo might have diſſolved the contract whenever he pleaſed. He had no freehold in his office, as a *pariſh clerk* has, who is upon that foot indeed holden to be irremoveable, and to gain a ſettlement. By

lord *Mansfield:* There is no colour for conſidering this as an annual office: It is no office at all. And Mr. juſtice *Aſton* ſaid, You cannot call it an annual office, when the ſequeſtration may be determined at any time. It is not like the annual office of a conſtable or a tithingman. They are appointed generally, and to ſerve for a year. That of pariſh clerk is a freehold: and it is upon that foot, that a pariſh clerk gains a ſettlement. The other two juſtices concurred. And both the orders were quaſhed. *Bur. Sett. Caſ.* 746.

H. 7 *G. Biſham* and *Cook.* The ſeſſions ſetting out the fact ſpecially, adjudge the ſettlement of a poor perſon to be at *Biſham*, becauſe when he lived in that pariſh, he executed the office of *collector of the duties* given by the 6 & 7 *W. c.* 6. on *births and burials.* It was moved to quaſh it, becauſe this was not a pariſh office, and it would be giving the commiſſioners (who are to appoint the collectors) a power to bring what charge they would upon the pariſh: Beſides, it was not ſtated in the order, that this was an annual office, as it muſt be to give a ſettlement, within the expreſs words of the act. By the court: The reaſon why the executing offices gives a ſettlement without notice is, becauſe of the notoriety of the thing, of which the parliament thought it impoſſible but the pariſh ſhould have notice: Can any thing be more notorious than this, which is to collect a duty from houſe to houſe? We cannot ſuppoſe a fraud in the commiſſioners, that they would appoint a perſon of no ſubſtance to be collector, only to bring a charge upon the pariſh. It needs not to be a *pariſh office*, but a *publick annual office in the pariſh.* And as to its not being ſaid, that this man executed it for a year, we muſt take it he did ſo, becauſe it appears on looking into the ſtatute, that the power given to the commiſſioners is to appoint a perſon who ſhall be collector of the duties for a year, and then give in his accounts. It hath been held a ſettlement in the caſe of the land tax, and why not in this? And the order was confirmed. *Str.* 411. *Foley.* 124.

H. 9 *Ann. St. Mary* and *St. Laurence* in *Reading.* Mr. *Foley* ſays, the queſtion was, Whether the being *church-warden* for the borough, and ſerving that office for a year in the borough, which extends itſelf into ſeveral pariſhes, is ſuch a ſervice of an annual office as will gain a ſettlement? And, by the court, it was held to be an office, the ſerving of which for one whole year, was ſufficient to gain him a ſettlement in that pariſh within the borough in which he lived. *Foley.* 121.——But in this report there

muſt probably have been ſome miſtake. A churchwarden is a parochial officer, and his office doth not extend into ſeveral pariſhes. Mr *Viner*, from a manuſcript note which he had of this caſe, ſays, The office is mentioned there to be warden of the borough (which is moſt likely) being in nature of a *tything man*, to execute the proceſs of the juſtices of the borough. But he is not to execute his office in one pariſh only, but all over the borough. And it was doubted whether this was a ſettlement or not; becauſe he was not elected into this office by the pariſh, neither was the exerciſe of his office confined to the pariſh; yet he is a publick officer, and his office is partly exerciſed within the pariſh, ſo that the pariſhioners muſt take notice of him. And, by the court, it was held a good ſettlement, being within the expreſs words of the ſtatute of executing an office in a town or pariſh. 19 *Viner*. 379.

E. 8 *G.* 2. *St. Maurice*'s and *St. Mary Calendar*'s in *Wincheſter*. *William Weſt*, a certificate man from *St. Thomas*'s, came into the pariſh of *St. Mary Calendar* in *Wincheſter*. He was afterwards choſen one of the *conſtables* for the city of *Wincheſter*, which city conſiſts of ſeveral other pariſhes beſides that of *St. Mary Calendar*; and was legally placed in that office, and executed it in and through all parts of the city for one whole year; during which time he reſided in the pariſh of *St. Mary Calendar*. By the court unanimouſly: He avoided his certificate, and conſequently gained a ſettlement in *St. Mary Calendar*'s, by executing this office in that pariſh; tho' choſen by the whole city, and not by the pariſh of *St. Mary* ſingly; and though not a mere pariſh office. For, in the words of the act, he executed an annual office in the pariſh, being legally placed in ſuch office. *Burrow's Settl. Caſ.* 27.

H. 9 *G.* *Burliſcomb* and *Samford Peverell*. The ſeſſions on a ſpecial order adjudge, that the office of *tythingman* is not ſuch an office as that a man thereby ſhall gain a ſettlement. But by the court: The order muſt be quaſhed; for this is an annual office in the pariſh, within the words and meaning of the act. *Str.* 444.

H. 2 *G.* 2. *Holy Trinity* and *Garſington*. A certificate man was appointed *tythingman* by the ſteward of a leet. He ſerved a year; but was not ſworn in till half the year was expired. The court inclined that it was a good ſettlement; but being a new caſe, and ſomewhat doubtful, they ordered a ſecond argument to this point, Whether he was legally placed in the office or not, as not having been ſworn till half the year was expired. But the order was

was afterwards quaſhed for want of complaint that the pauper was actually become chargeable. *Foley.* 123. *Caſ. of S.* 72. *Burrow's Settl. Caſ.* 30.

M. 17 *G.* 2. *Wingham* and *Sellindge.* A certificate man was told by his wife, that the borſholder had left a wooden tally at his houſe, as a token that he had been choſen *borſholder* at a court leet of the manor; but he did not know it of his own knowledge, nor was there any evidence of a preſentment by the leet jury, or of his appointment or election, nor did he ever take the oath of office; but once he executed a warrant of a juſtice directed to the borſholder, and for that whole year he was willing and ready to execute the office. By the court: When an order of ſeſſions ſtates the facts ſpecially, the court muſt take it, that the juſtices have ſtated all the evidence that appeared to them. Now the act requires a legal placing in the office. But it is ſtated here negatively, that there was no preſentment, no admiſſion or ſwearing. So that here is no foundation for ſupporting a legal placing. *Str.* 1299. *Burrow's Settl. Caſ.* 223.

H. 31 *G.* 2. *Cold Aſhton* and *Woodcheſter.* There was a cuſtom to ſerve the office of tythingman, for half a year only at a time. By lord *Mansfield* Ch. J. This cannot be an annual office to gain a ſettlement.——In this caſe, the pauper had ſerved the office of tythingman in *Cold Aſhton* for half a year, and 20 years after for another half year. *Burrow, Mansfield.* 502.

M. 18 *G.* 2. *Fittleworth* and *Pulborough.* A certificate man was elected and ſworn a tythingman for a tything which did not extend through all the pariſh of *Fittleworth*, but comprehended that part of it where he reſided. He executed the office a little more than five months, and then became actually chargeable, and aſked relief. Whereupon two juſtices removed him, and their order upon appeal was affirmed. And, by the court: The juſtices had juriſdiction to remove him, though in execution of the office, he being become actually chargeable. It is not neceſſary that the office ſhould extend throughout all the pariſh; the act only requires executing ſome annual office in the pariſh. But it muſt be executed for the ſpace of a whole year. And the preſent caſe being an execution for leſs than a whole year, it did not avoid his certificate, and conſequently did not gain him a ſettlement at *Fittleworth.* Burrow's Settl. Caſ. 238.

T. 27 & 28 *G.* 2. *Whitchurch* and *Overton.* It was ſtated, that the pauper was nominated at the court leet,

and ſworn into the office of *bailiff* or *ale-taſter* for the borough: That he executed the office in the borough for a year: That the ſaid office conſiſts in inſpecting weights and meaſures within the borough, and in warning the jury to ſerve at the court leet there: That the borough is not one fifth part of the pariſh: That the bailiffs have never executed any authority over the pariſh at large: That great part of the pariſh knew nothing of ſuch office: And that new married men, and new comers, were frequently nominated for the ſake of colt-ale. On the authority of the caſe of *Fittleworth*, this was held to be a good ſettlement. *Burrow's Settl. Caſ.* 365.

E. 18 *G.* 2. *Sheepſhead* and *Melborne*. A perſon was certificated from *Sheepſhead* to *Melborne*, and ſtaid there ten years, during which time the lady *Elizabeth Haſting*s conveyed lands to truſtees for ſeveral charities out of the profits, and amongſt others, the ſum of 10l a year to the charity ſchool at *Melborne*, to be paid to the vicar there for the time being. In the ſpecial order of ſeſſions it was ſtated, that the certificate man officiated as ſchoolmaſter ſeveral years, and received the 10l a year from the vicar: and this the ſeſſions held, gained him a ſettlement in *Melborne*, where they declare he had a freehold eſtate; and ſo had both the requiſites to obtain a ſettlement to a certificate perſon, namely, a tenement of 10l a year, and executing an annual office: But by the court: The order muſt be quaſhed; for it doth not appear how he came into this employment, and the legal right to receive the ſalary is in the vicar, who not caring to officiate himſelf, has therefore paid it over to this man as his deputy, which could never give any perſon a ſettlement, much leſs to a certificate man. *Str.* 1225. *Burrow's Settl. Caſ.* 244.

Note, A *ſchoolmaſter* is not *legally placed in the office*, till he hath ſubſcribed before the biſhop the declaration of conformity to the liturgy of the church of *England*, and is licenſed by him: And by the 13 & 14 *C.* 2. *c.* 4. *ſ.* 10. if he ſhall execute the office without having ſo ſubſcribed; he ſhall be utterly diſabled, and *ipſo facto* deprived thereof, and the ſame ſhall be void as if he were naturally dead.—Unleſs he is a proteſtant diſſenter: in which caſe, in order to be legally qualified, he muſt at the ſeſſions where he reſides take the oaths and make the ſubſcriptions in like manner as proteſtant diſſenting miniſters are required by the 19 *G.* 3. *c.* 44. whereof the clerk of the peace's certificate is the proper evidence. For which ſee Title *Diſſenters*.

xi. Of

xi. Of ſettlement by renting 10l a year.

By the 13 & 14 *C.* 2. *c.* 12. *On complaint within* 40 *days after any perſon ſhall come to ſettle in any tenement under the yearly value of* 10*l*, *two juſtices may remove him to where he was laſt legally ſettled for* 40 *days.*

By the 9 & 10 *W. c.* 11. *No perſon who ſhall come into any pariſh by certificate, ſhall be adjudged by any act whatſoever to have gained a legal ſettlement in ſuch pariſh, unleſs he ſhall really and* bona fide *take a leaſe of a tenement of the yearly value of* 10*l*, *or ſhall execute an annual office in ſuch pariſh.*

Within 40 *days*] Leſs than 40 days reſidence upon a tenement of 10l a year will not gain a ſettlement. As in the caſe of *Dilwin* and *Leominſter*, *T.* 8 & 9 *G.* 2. *William Smith*, the pauper, agreed for a farm in the pariſh of *Eardiſland*, to hold from *Candlemas*, at 44l yearly rent; and in *April* following he ſowed about 15 acres of the land with grain; and in *May* following, he came to live on the farm, and inhabited there about three weeks; and then the greateſt part of his ſtock of cattle was ſeized and driven away, for rent due to his former landlord at *Leominſter*. Whereupon the ſaid *Smith* then came to a new agreement with his landlord in *Eardiſland*, and agreed to quit that farm, and to continue in the farm houſe and garden, and to have a ſmall parcel of paſture with it, at the rent of 31 10s, and he continued thereupon in the ſaid pariſh of *Eardiſland* till *Michaelmas* following. By lord *Hardwicke* Ch. J. There was no inhabitancy for 40 days in *Eardiſland* under the leaſe of 44l a year; and therefore there can be no ſettlement gained under it. And the next agreement with his landlord in *Eardiſland* was quite a ſeparate contract, and cannot be tacked to the former. It did not take effect till the other was finiſhed. *Burrow's Settl. Caſ.* 54.

After any perſon ſhall come to ſettle] Here it is to be conſidered, where ſeveral perſons come to ſettle upon a tenement, either as taking jointly, or by under-leaſes one from another, whether this ſhall ſettle all or any of them.

M. 25 *G.* 2. *Marden* and *Barham*. Two perſons jointly hired a houſe and land at *Marden* for 16l a year, and jointly occupied the houſe and tilled the land for the ſaid year, and jointly paid the rent, that is, each the like ſum. It was urged that this gained no ſettlement to either of them. And a caſe was cited, between *Croſt* and *Gain-*

ford at *Durham* aſſizes 1733, which was a joint taking of 14l a year, each paying ſeparately, the landlord not caring to let to either ſingly. And the two judges (lord chief juſtice *Eyre* and *Reeves)* to whom it was referred, held it no ſettlement; becauſe the ſtatute requires the perſon's taking a tenement of 10l a year value: Whereas this practice of calling in a partner in the taking, would, if admitted equivalent to a ſole taking, evade and fruſtrate the ſtatute, and let in an indefinite number of families all to be ſettled upon one tenement of 10l a year value. On the contrary it was argued, that each was legally tenant of the whole, both being liable to the landlord for the whole rent. By the court: This was not ſufficient to gain a ſettlement. Whatever remedy the landlord might have againſt the occupiers of the land for his rent, the act of parliament in the preſent caſe conſiders only the right; which clearly is but to one half, and that half doth not amount to the value of 10l a year. *Burrow's Settl. Caſ.* 311.

T. 29 & 30 *G.* 2. *Little Tew* and *Duns Tew*. *Richard Guffkyns* the pauper, together with *John Goodwin* his father in law, rented a tenement at *Duns Tew* at 81l a year, as partners; and lived there 12 years. And being about to leave *Duns Tew*, *Goodwin* alone went to Mr. *Keck*'s agent at *Little Tew*, and took a farm of 52l a year, for 4 years. After the ſaid taking, and before the farm was entered upon, *Guffkyns* inquired of *Goodwin*, whether he depended upon his going with him to *Little Tew?* To which *Goodwin* replied, that he did; for he could not go without him. They both removed from *Duns Tew* to *Little Tew*, with their whole joint ſtock, to the value of more than 100l; and managed the farm together for 7 years, both of them reſiding thereon. Mr. *Keck* gave his receipts for the rent to *Goodwin* only; and once, when Mr. *Keck* diſtrained for rent, the diſtreſs was made upon the ſtock which Mr. *Keck* ſuppoſed to be *Goodwin*'s only; and *Goodwin* alone gave a bill of ſale of the ſtock; and *Guffkyns* then ſtood by, without interpoſing. At the end of 7 years, juſt before the order of removal was made, *Guffkyns* went off from the farm, and *Goodwin* took the whole ſtock, allowing *Guffkyns* 62l for his moiety thereof. It was adjudged by the juſtices, that this being not a joint hiring, but a taking by *Goodwin* only, *Guffkyns* the pauper did not hereby gain a ſettlement. On removal of this cauſe into the court of king's bench, it was obſerved by the court, that the words of the ſtatute are, *coming to ſettle in any tenement under the yearly value*

value of 10*l.* That the agreement between the two farmers was, to occupy jointly, with a joint ſtock: That the caſe doth not turn only upon the credit given to the tenant by the landlord, but upon the credit given by the legiſlature to a man able to ſtock a farm of ſuch a value: A tenant may let the whole, or even ſubdivide it out to under-tenants, who may thereby gain a ſettlement, if the tenement be above 10l a year: And where is the difference, between the original tenant's letting out part, and his taking in a partner? —— And after having taken time to conſider of it, the reſolution of the court was, that *Guffkyns* gained a ſettlement in *Little Tew*. For, being taken in partner by *Goodwin*, he is to be conſidered as having an intereſt in the farm, at leaſt as tenant at will to *Goodwin* of the moiety of a farm worth 52l a year for the whole of it, and conſequently his moiety above 10l a year. A tenancy at will, even in the caſe of a certificate perſon, is ſufficient to gain a ſettlement, as was determined in the caſe of *Cranley* and *St. Mary's Guildford*, *H.* 8 *G.* Burrow's Settl. Caſ. 398.

M. 7 *G.* 3. *Llandverras and Northop. Evan Hughes*, father of the pauper, rented a tenement of 10l a year, and paid the rent to the landlord. He lived for above 40 days in a part of it, which part was of the yearly value of 40s only. And immediately after his taking the tenement, he let the reſidue thereof to under-tenants, without reſiding thereupon at all himſelf. It was argued, that being liable only to the rent did not gain him a ſettlement. He muſt occupy as well as take a tenement of 10l a year value, and he ought to occupy the whole 10l. a year. Otherwiſe, many different poor families might be introduced into a pariſh, upon one ſuch taking. It would quite evade the act, if the mere taking of a tenement would do; for then one would gain a ſettlement by taking, and another by occupying the ſame tenement. By the court: In caſe of a groſs fraud, the ſeſſions no doubt would find it ſo, and the ſettlement would be void. But no fraud being found, there is no doubt upon the law of the caſe, but that *Hughes* was the tenant and liable to the rent, and had credit for the whole. And therefore he is as much ſettled, as if he had rented a tenement of 10l a year, and let lodgings. The act doth not require a perſon renting a tenement of 10l a year, to occupy it; it is enough, if he rents it, and reſides 40 days in the pariſh. The ground the act goes upon, is a perſon's having credit ſufficient to hire a tenement of that value. This man appears to have had ſuch credit. The under-tenants do not take a tenement of the yearly

yearly value of 10 l; therefore they do not hereby gain a ſettlement. *Burrow's Settl. Caſ.* 571. *Black. Rep.* 603.

T. 13 *G.* 3. *Awre* and *Newnham*. The pauper *Hathaway Denton*, and one *Richard Mann* his wife's father, jointly rented and occupied an eſtate at *Newnham* of 80 l a year, for three years. The ſaid *Richard Mann* dying about the end of that time, the ſaid *Denton* ſoon afterwards did, alone, take a houſe of one *Richard White* at *Awre* of the yearly rent of 3 l, and another eſtate conſiſting of lands of one *John Serjeant* at *Awre* aforeſaid, at the yearly rent of 8 l. The ſaid *Richard Mann* leaving a widow, and ſhe and the ſaid *Denton* being upon the death of the ſaid *Richard Mann* jointly poſſeſſed of the remainder of the ſtock which had been on the eſtate at *Newnham*, they the ſaid *Hathaway Denton* and the ſaid widow went and lived at the ſaid houſe at *Awre*, and jointly occupied that houſe and the ſaid eſtate of 8 l. a year, for one year, the ſtock on the ſaid houſe and eſtate being partly the property of the ſaid *Denton*, and the other part the property of the ſaid widow; and ſometimes one of them ſold ſome part of the ſaid ſtock, and received the money for the ſame; and at other times, the other of them ſold other parts of the ſaid ſtock, and received the money for the ſame: And at the time of taking the ſaid tenements by *Denton*, neither the ſaid *Richard White* nor the ſaid *John Serjeant* knew of any connection ſubſiſting between the ſaid *Denton* and the ſaid widow. A moiety of the ſtock was more than ſufficient to ſtock the ſaid houſe and farm.——It was argued, that *Denton* did not gain a ſettlement in *Awre*. For though he had taken 11 l a year, yet he came to ſettle upon only the half of 11 l a year. And it appears upon the whole that he never took 11 l a year for himſelf. It was admitted, that if the whole taking had been 20 l a year or upwards, then indeed each joint taker would have gained a ſettlement: But as the whole in the preſent caſe amounted only to 11 l, each muſt be conſidered as coming to ſettle upon only the half of 11 l. Conſequently, this man's ſettlement in *Newnham* remained, as he gained none in *Awre* by coming to ſettle on a tenement under the yearly value of 10 l.——Unto which it was anſwered, that the criterion of being likely or not likely to become chargeable is, the having credit to take a leaſe of a tenement of that value. A perſon fit to be truſted with renting a tenement of 10 l a year, is ſuppoſed not likely to become chargeable to the pariſh. Here, the pauper alone made the application to take the tenements; and he alone was perſonally reſponſible for the rent.——Lord *Mansfield* was

not

not in court. The other three judges declared themſelves all thoroughly ſatisfied, that the ſettlement was in *Awre*. Mr. juſtice *Aſton* obſerved, that if two perſons jointly take a tenement of leſs annual value than 20 l, this will not gain a ſettlement to either of them. But a man who takes more than 10 l in yearly value, may let part of it to under-tenants: And this will not deſtroy his ſettlement, tho' it will not gain one to ſuch under-tenants, who pay him leſs than 10 l a year, as was determined in the caſe of *Llandverras*. This woman, the widow *Mann*, was in the nature of an under-tenant to the pauper. The pauper had the credit of taking the tenement. He alone took the houſe, and likewiſe the lands. Neither of the landlords knew of any connection between the widow and him. And he only was perſonally reſponſible for the rent. They were not partners in taking the tenement, tho' they were joint occupiers of it. She would gain no ſettlement by merely being a joint occupier, without having been concerned in taking it. Nor ſhall the perſon who alone took it loſe his ſettlement by letting-in a joint occupier. *Burr. Settl. Caſ.* 756.

But if a leaſe or intereſt in a tenement under 10 l a year devolves upon a perſon by executorſhip or other act of law; this is not within the ſtatute, as taking a leaſe of a tenement: but ſuch perſon continuing upon the tenement 40 days irremoveable, thereby gains a ſettlement. As in the caſe of *Uttoxeter* and *Marchington Woodlands*, T. 5 G. 3. The pauper *William Gilbert*, was ſettled at *Uttoxeter*. His mother rented and reſided upon a farm of 22 l a year at *Marchington Woodlands*; which ſhe deviſed to her 5 children, and made the pauper and her 3 other ſons executors of her will, and died. The pauper alone proved the will, and entred as her executor, and reſided upon the farm 12 or 13 weeks. He afterwards returned to *Uttoxeter*; but continued to go over to *Marchington Woodlands*, to give directions from time to time, and had a ſervant upon the farm till the *Lady-day* following. The queſtion was, Whether hereby he gained a ſettlement at *Marchington Woodlands?* It was objected, that a perſon ought to come to the tenement by a leaſe or ſome contract with the owner. But an executor is not anſwerable, perſonally and in his own property, to the landlord. He is under no contract with him. Nor is here a ſufficient reſidence. He ſtays no longer than his truſt of executorſhip required. He never meant it for a reſidence. It is like the *Scarborough* caſe between *Elvetham* and *Alton*; was only a caſual reſidence. Beſides the value is not ſufficient; for

for he was only intitled to a joint intereſt in 22l a year, with 3 or 4 other perſons. So that his ſhare is nothing like 10l. a year. And his proving the will makes no difference: for the other 3 executors are equally intitled, and may prove the will as well as himſelf. By the court: It is very true, that a ſhare not amounting to 10l a year of a tenement of above 10l a year in value, will not do. But here he has a right as executor. The value thereof is totally immaterial; becauſe, by common law, no perſon can be removed from his own. And one who has a right to reſide irremoveably, doth thereby gain a ſettlement, if he reſides 40 days. *Burrow's Settl. Caſ.* 538.

Shall come to ſettle] For taking land in the pariſh, of whatever value it ſhall be, without coming to reſide there, will not gain a ſettlement.

But if a man's family reſide there, altho' he doth not reſide there himſelf, it may in ſome inſtances be ſufficient. As in the caſe of *St. Margaret's Weſtminſter*, and *Ludgate*, *M.* 5 *G.* 2. Two juſtices remove *Elizabeth Conyers* from the pariſh of *St. Margaret*'s to the pariſh of *Ludgate*. The ſeſſions ſtate the caſe ſpecially, that *James Conyers*, father of the ſaid *Elizabeth*, rented a houſe in *Ludgate* pariſh of 25l a year, and paid to the rates of the church and poor; but that he was a priſoner in the *Fleet* at the time he did ſo; and that *Elizabeth* gained no ſettlement for herſelf. Upon which the ſeſſions adjudged that he gained no ſettlement by this. But the court quaſhed the order of ſeſſions, and confirmed the order of the two juſtices. 1 *Barnardiſt.* 76. For in this caſe he was in cuſtody of the law, and in no capacity of gaining a ſettlement elſewhere; tho' occaſionally abſent, yet he might be looked upon as virtually reſident at *Ludgate*, which was the place where he *came to ſettle*.

In any tenement] Here it occurs to be conſidered, what ſhall be a *tenement* within this act, ſo as to gain a ſettlement. Concerning which it hath been adjudged as follows:

H. 10 *Ann. Evelin* and *Retcombe*. An order was drawn up ſpecially to have the opinion of the court, Whether renting of a *watermill* of 10l a year, would make a ſettlement? And by the whole court clearly: A mill is a *tenement*, and the renting thereof muſt gain a ſettlement within the ſtatute. 2 *Salk.* 536. That is, if the party lives therein, or within the pariſh.

T. 10 *G.* 2. *Butley* and *Benhall*. The queſtion was, Whether renting a *windmill* at 14l a year, gained a ſettlement?

tlement? it having been determined that a watermill did. It was ſaid, thoſe are always habitable, but the others often are not. But by the court: It is the ſame as if he had rented land of that value. 1 *Seſſ. C.* 320. *Burrow's Settl. Caſ.* 107.

H. 12 *G. Stone* and *Kniver.* Upon a ſpecial order of ſeſſions, it was ſtated, that the pauper rented a *coney-warren* and a cottage upon it at 10 l a year, which the juſtices were of opinion did not gain him a ſettlement. But by the court: A *mill* hath been held to be a tenement within the ſtatute, and why not this? It is his ability to pay 10 l a year, that is the foundation of the ſettlement; and whether he pays it for a houſe of habitation, or for a warren which brings him in a profit, is not material; the order of ſeſſions muſt be quaſhed. *Str.* 678. 2 *Seſſ. C.* 109.

But by the 13 *G.* 3. *c.* 84. A perſon renting *turnpike tolls*, and reſiding in the toll houſe, ſhall not thereby gain a ſettlement. *ſ.* 46.

E. 3 *G.* 2. *Minchinghampton* and *Biſley.* Order ſpecially ſtated: The pauper rented, in the pariſh of *Biſley*, lands of the yearly value of 8 l from his father, an houſe of the yearly rent of 1 l 10 s from his uncle, and the ſame year *took the paſture* of a piece of land in the ſaid pariſh from *All Saints* day to *Candlemas*, and paid 12 s for the ſame, which piece of land was worth 6 l a year. It was urged, that this was a good ſettlement, becauſe during thoſe three months the man was not removeable. But in this caſe, the court held, that *taking the paſture of a piece of land* was not more than taking the herbage, or than taking the common, which could not be eſteemed part of a *tenement* within the meaning of the ſtatute; but ſeemed to think, that if the words had been, that he had *taken a paſture ground* for three months, that would have made a good ſettlement. But the caſe went off upon another point, namely, for want of an adjudication. 2 *Seſſ. C.* 132. *Str.* 874. *Burrow's Settl. Caſ.* 316.

H. 25 *G.* 2. *Lockerley* and *Shirefield Engliſh. John Merſh* occupied a meſſuage, farm, and lands in *Lockerley.* He covenants with *Edwards* a dairy-man, to let him a dairy conſiſting of 16 cows, with the dwelling-houſe, and feeding for the ſaid cows on 21 acres of clover ground, and 13 acres of meadow land, with the after-leaſe of a mead; together with the run of the backſide and the arſhes, for the feeding of pigs; and alſo the run of one horſe, with the cows aforeſaid; from the 2d of *February*, for one year. *Merſh* was to allow *Edwards* all the ſherl wheat ariſing from

from the corn growing on the farm; and alſo to provide for the uſe of the cattle, when wanted, five tons of hay; and, for the feed of the ſame cattle, to cauſe 10 acres of the clover ground and 13 acres of the meadow to be laid up at *Candlemas* day, and the other 11 acres of the clover at *Lady-day*; and alſo to put the dwelling houſe and premiſſes into repair; and fetch home the goods, neceſſaries, and fuel of *Edwards*. *Merſh* was to abate 2 s a week for every cow not delivered of her calf by the firſt of *May*, until ſhe ſhould be delivered; and alſo what may be reaſonable, for every calf wanting to ſuch cow. *Edwards* covenanted to pay *Merſh*, in conſideration of the premiſſes, 3 l 5 s for every ſuch cow as aforeſaid delivered to his uſe and poſſeſſion, payable quarterly; except as abovementioned. The queſtion was, Whether this was a tenement within the act, ſo as by the renting thereof to gain a ſettlement? And by the court, it was not. A tenement muſt lie in tenure, and relate to land. Whereas this is a mere perſonal contract, an agreement for the uſe and feeding of cows. *Burrow's Settl. Caſ.* 315.

As to the caſe, *Whether it ſhall be one intire tenement?* It hath been adjudged as follows:

M. 1 *G. North-Nibley* and *Wotton under Edge*. A perſon rented an alehouſe at 5 l a year, at *Lady-day*, for a year; and in *May* following rented a piece of land for 6 l a year; held the ſame for two months; and ran away. It was held, that it was not neceſſary the meſſuage or tenement ſhould be rented of one perſon; though it be rented of ſeveral, yet in him it is but one, and the ſtatute is ſatisfied, he being of ability to be truſted with a tenement of 10 l a year. *Caſes of S.* 86. 1 *Seſſ. C.* 73. *Fol.* 79.

Furthermore; It is to be conſidered, How far *the ſame tenement, but lying in different pariſhes*, ſhall gain a ſettlement: As to which it hath been adjudged as follows:

T. 3 *G. South Sydenham* and *Lamerton*. A perſon rented a tenement of 10 l a year, being one intire tenement, but lying in two pariſhes. The queſtion was, Whether this gained a ſettlement? By the court: If the tenement be intire, though the lands be in different pariſhes, it ſeems to be a ſettlement in that pariſh where the houſe is; otherwiſe, where the tenements are diſtinct, and lie in different pariſhes, as if a tenement of 8 l lie in one pariſh, and a tenement of 3 l in another. *Str.* 57. 1 *Seſſ. C.* 115. *Foley.* 81.

But the queſtion in this caſe only was, Whether one and the ſame tenement, and not whether two diſtinct tenements of the yearly value of 10 l, but lying in different pariſhes,

pariſhes, ſhall gain a ſettlement: So that the determination in this caſe, as to this latter point, was extrajudicial. And the reaſon given by the court in this caſe doth extend as well to different tenements, as to one intire tenement, *viz.* The miſchief recited by the ſtatute, and intended to be prevented, is the vagrancy of poor perſons, who uſed to come into pariſhes where there was the beſt ſtock; and the ſtatute deſcribes who are intended by thoſe poor, namely, ſuch perſons who are not capable of hiring a tenement of 10l a year; now the man's ſufficiency is not the leſs, becauſe 6l a year, part of the tenement, is in a different pariſh. There are conſiderable farmers who do not rent 10l a year in any one pariſh, and it would be hard to adjudge that therefore they gain no ſettlement. *Str.* 58. *Foley.* 81.

M. 3 *G.* 2. *Elſted* and *Hollibourne.* The caſe was this: A perſon rented a tenement, conſiſting of a farm houſe and lands of 12l 10s a year; which houſe and lands laid contiguous, and had been uſually letten together and occupied by the ſame perſon, but the houſe and ſo much of the land, as together amounted to 9l a year, lay in one pariſh, and 3l 10s in another pariſh. By the court, This was held to be a ſettlement; on the authority of *South Sydenham* and *Lamerton.* 2 Seſſ. C. 130. Str. 849.

Further yet; It remains to be conſidered, how far *two diſtinct tenements, one being in one pariſh, and another being in another pariſh,* ſhall be deemed a ſufficient tenement within the act, whereby to gain a ſettlement: For although in the caſe of *South Sydenham* and *Lamerton* aforeſaid, the court ſeemed to be of opinion that two ſuch tenements would not gain a ſettlement; yet that (as hath been obſerved) was not the point in queſtion. And in the caſe of *Sandwich* and *Studland*, *E.* 8 *G.* 2. it was reſolved as follows: A perſon rented a houſe in *Studland* at 30s a year. After he had lived in it about 2 years, he took lands in *Langton* of 12l a year, on which there was no houſe; and occupied the ſaid lands two years: All which time he inhabited in and rented alſo the ſaid houſe in *Studland.* By the court; It hath been a queſtion, Whether two diſtinct tenements taken at different times (where neither of them alone amounted to 10l a year in value) ſhould make a ſettlement? But it is now ſettled that it does. And it is the ſame thing whether the taking was diſtinct or intire, or in one pariſh or two pariſhes. The ſettlement is in the pariſh where he lives. The ground

of

of theſe reſolutions is, the ability to rent a tenement of ſuch a value: which excludes the preſumption of his being likely to become chargeable to the pariſh. *Burrow's Settl. Caſ.* 44.

E. 8 *G.* 3. *St. Laurence* and *St. Maurice* both in *Wincheſter*. *Richard Gradidge*, huſband of the pauper, rented a tenement of one *Henry Warne* in the pariſh of *Hurſley* for a year from *Lady-day* at 31 10s a year, but reſided therein five or ſix weeks only, and then quitted it, and tendred the key to the ſaid *Henry Warne*, which *Warne* refuſed to accept; whereupon *Gradidge* left it with a neighbour, before *Midſummer Day* then next, for the ſaid *Warne* to take it when he thought proper. On the ſaid *Midſummer Day*, *Gradidge* took a tenement in the pariſh of *St. Maurice*, at the rent of 9l a year; and on the ſame day entered into poſſeſſion thereof, and reſided thereon above 40 days, before the key in *Hurſley*, was received by the ſaid *Warne*, who did not accept it till the 16th of *Auguſt* following. It was objected, that although it be ſettled, that if a perſon rents a tenement in two different pariſhes, amounting to 10l a year in the whole, he ſhall gain a ſettlement in that of the two pariſhes in which he reſides; yet ſtill, in order to gain a ſettlement, he ought to be the joint occupier of both tenements within the ſame period: Whereas here, the firſt contract was diſſolved, from *Midſummer* at leaſt, if not ſooner. The landlord took back the key on the 16th of *Auguſt*, which relates back to the abandonment ſome time before *Midſummer*. But by the court: Here is a contract for a year in *Hurſley* not diſſolved: nor could it be diſſolved: The landlord refuſed to accept the key: And he did not receive it at laſt till the middle of *Auguſt*, which was more than 40 days after hiring the ſecond tenement. *Burrow's Settl. Caſ.* 588.

Under the yearly value of 10 *l*] If the tenement is under 10 l a year, the juſtices upon complaint within 40 days have power to remove the perſon coming there to reſide; if it is not under 10 l a year, they have no power to remove him; and continuing upon the ſame unremoveable for 40 days, he thereby gains a ſettlement.

Upon which it is obſervable, that the payment of the rent can be no matter of conſideration with regard to the ſettlement; for the ſettlement is obtained before the rent becomes due. For the ſettlement is not ſuſpended, as in the caſe of a hired ſervant, until he hath ended his year; but ſo ſoon as he hath reſided 40 days, he is ſettled without more; even as a ſervant hired for a year, became ſettled in 40 days, before the ſtatute of 8 & 9 *W.* and as apprentices are

are ſtill ſettled in 40 days, without any regard to ſerving out their time.

And it is obſervable, that the ſtatute doth not ſay for what *time* he ſhall rent the tenement, but only of what value it ſhall be by the year. And in the caſe of *Gratwich* and *Shenſton*, *E.* 32 *G.* 2. A perſon took an houſe of 30s a year in the pariſh of *Gratwich*; and two acres and an half of land in the pariſh of *King's Bromley*, for the growing of potatoes, from *Candlemas* to *Michaelmas*, being eight months, for 11l; and lodged the laſt 40 days before *Michaelmas* in the pariſh of *King's Bromley*. It appeared that he took them *bona fide*, and without any deſign of fraudulently obtaining a ſettlement in the pariſh. And it was adjudged that he gained a ſettlement thereby in the ſaid pariſh of *King's Bromley*. Burrow's Settl. Caſ. 474.

H. 6 *G.* 3. *Staunton under Bardon* and *Uleſcroft*. The pauper *William Harriſon* took a tenement from the firſt of *June* till *Lady-day* following for 26 guineas, which he occupied accordingly, and paid the rent. The queſtion was, Whether by continuing upon this tenement for 40 days unremoveable, he thereby gained a ſettlement? And by the court clearly, he did. *Bur. Settl. Caſ.* 558.

H. 7 *G.* 3. *St. Matthew's Bethnal Green* and *St. Botolph's Aldgate*. *John Fell*, the huſband of the pauper, hired a houſe for five months, for which he agreed to pay the ſum of 4l. He came and reſided with his family there, during the ſaid five months. And the houſe, at the time of hiring and entring upon the ſame, was worth, to be let, 10l by the year. It was argued, that this could not gain a ſettlement. The criterion, which is, the ability of the perſon to hire a tenement of 10l a year value, fails in this caſe. For it doth not appear that this man had ſuch a degree of credit as the ſtatute requires. Beſides that the proportion of 4l for five months falls ſhort of 10l a year by about 8d a month. But by lord *Mansfield* and the court: The rent is not material, but the value. And we are concluded from treating this tenement as under 10l a year, by the finding of the juſtices, who have ſtated it as a fact, that at the time when he took it, it was of the value of 10l a year to be let. And it was adjudged, that hereby he gained a ſettlement. *Burrow's Settl. Caſ.* 574.

Of ten pounds] Upon theſe words, the value of the tenement is conſiderable; or what ſhall be deemed a tenement of 10l a year, ſufficient to gain a ſettlement. Concerning which it hath been adjudged as follows:

H. 13 *G.* 2. *Southwold* and *Yokesford*. A perſon took an

an houſe at the yearly rent of 10l. The landlord agreed to make new buildings; which improvements were never made. The houſe, without the improvements was worth only 6l 10s a year. By the court: The ſeſſions muſt judge upon the facts; they have ſtated that the agreement was for 10l a year; this is evidence of the value: but the juſtices have a right to enquire into the real value; and they have expreſsly ſtated as a fact, that this houſe was only of the value of 6l 10s a year; and the mere covenant to build, which covenant was never performed, cannot alter the caſe. Therefore it was adjudged that this was no ſettlement. 2 *Seſſ. C.* 198. *Str.* 57. *Burrow's Settl. Caſ.* 140.

T. 3 *G. South Sydenham* and *Lamerton.* Order ſpecially ſtated: A perſon took a leaſe of a tenement for 99 years, determinable on three lives, and paid his fine, and the rent reſerved was but 7l, but the real value was 13l. By the court: The quantity of the rent is not material, but the value of the tenement. If there be a leaſe of lands worth 10l a year, and a fine be paid, and 20s only reſerved, it makes a ſettlement; ſo if no fine be paid, or no rent reſerved, yet if the tenement is worth 10l a year, it makes a ſettlement: for the ſettlement depends on the value of the tenement, and not on the rent. 2 *Seſſ. C.* 198. *Str.* 57.

H. 16 *G.* 3. *K.* and *Bilſdale Kirkham* in the north riding of the county of *York. Thomas Wilſon* went from the pariſh of *Bilſdale Kirkham* to *Bilſdale Weſtſide*, and there married *Sarah* the pauper, who then rented a tenement of 4l a year, and he occupied the ſaid tenement with her during his life. He afterwards died, leaving the ſaid *Sarah* the pauper. Evidence was offered to prove this tenement at the time the man occupied it with his wife was worth 15l a year, tho' let at no more than 4l. But the ſeſſions rejected this evidence, and determined on the rent actually reſerved; which being under 10l a year, they adjudged that the pauper was not ſettled in the pariſh of *Bilſdale Weſtſide*, by renting ſuch tenement. By lord *Mansfield:* The juſtices have done wrong, in not receiving the evidence of the value of the tenement beyond the rent paid. Every leaſe from year to year begins afreſh every year, and is in point of law a new demiſe. If the tenement was of the value of 10l a year any year during the man's occupation of it, he will thereby gain a ſettlement. The caſe was ſent back to the ſeſſions to receive evidence of the value. Which being certified as above, the court held it a good ſettlement. *M. S.*

T. 14 & 15 *G.* 2. *Weſton* and *Kirton.* Caſe ſpecially ſtated. A perſon took a farm at *Kirton* of 10l a year, which had been let at that rent for five or ſix years then

laſt

laſt paſt, but before that time was let at 7l a year only. When he firſt took and entred thereon, he was not of ability to ſtock the ſame. Before his entry, he was told by the former tenant, that his farm was too dear. To which he anſwered, That he did not regard the dearneſs; for as it was 10l a year, it would gain him a ſettlement, and put an end to a diſpute there was between two towns about his ſettlement; but deſired the ſaid former tenant to take no notice thereof to any body. By the court: We are not to determine the matter upon the evidence given to the ſeſſions, but upon facts ſtated and adjudications made by them. Here they have ſtated circumſtances; but they have not explicitly ſtated the real value, nor have they adjudged any fraud. The act requires the renting a tenement of the yearly value of 10l. They ſtate, that he did take a tenement of 10l a year at *Kirton*. Indeed they add, that it had been let at 7l a year formerly. But it might be then worth more, or might have been afterwards improved; and it had for five or ſix years laſt been let at 10l a year. And the quantity or value of his ſtock doth not alter the value of the tenement. They alſo ſtate a converſation between him and the former tenant, who told him it was too dear; to which he anſwered, That he did it to gain a ſettlement. Yet they do not adjudge that there was any fraud; nor do they ſtate that it was under the value of 10l a year, and the evidence rather proves it to be of that value. They muſt expreſsly ſtate that it is fraudulent, or elſe we cannot take it to be ſo. And we muſt take the caſe ſtated to be the whole caſe. Therefore it was adjudged, that hereby he gained a ſettlement at *Kirton*. 2 Seſſ. C. 141. Str. 1156. Burrow's Settl. Caſ. 166.

E. 33 *G.* 2. *Kniveton* and *Tiſſington*. The pauper *Iſaac Wibberley*, being ſettled at *Tiſſington*, took a farm at *Kniveton* of 8l a year; and alſo at the ſame place, jointly with one *Thomas Hill*, took another farm of 3l 15s a year; and at the taking of the ſaid farm of 3l 15s, it was agreed between the ſaid *Iſaac Wibberley* and *Thomas Hill*, that *Thomas Hill* ſhould have and take one half of the corn and hay of the ſaid 3l 15s farm; and that the ſaid *Iſaac Wibberley*, after that the ſaid *Thomas Hill* had taken and carried away his half part of the ſaid corn and hay, ſhould have the whole farm of 3l 15s till *Lady-day* following, paying to the ſaid *Thomas Hill* 4s for the ſaid *Hill*'s ſhare of the ſaid farm. The queſtion was, Whether this was a tenement of the yearly value of 10l? The counſel for the pariſh of *Tiſſington* argued, that *Wibberley* the pauper was liable (as being joint tenant with *Hill*) to anſwer for and pay the

whole 3l 15s; and moreover, that he was ſole tenant of that farm, for and during the laſt half year: or, even taking it at the ſtricteſt, that he was really and properly to pay 10l 1s 6d a year; for he is to pay 8l, and half of 3l 15s (which is 1l 17s 6d), and 4s more for the laſt half year, which is in all 10l 1s 6d. But the court unanimouſly held, That this tenement, thus rented in *Kniveton*, w. under the yearly value of 10l. The act fixes the value at 10l. And the value muſt be eſtimated by the rent, and always is taken to be according to the rent. And here the rent is 8l a year, and the half of 3l 15s; which two rents taken together do not amount to 10l. Indeed, he was to pay *Hill* 4s for the advantage he was to have, after the crop was off: But an agreement of this ſort, between the two joint tenants cannot be conſidered as a rent. *Burrow's Settl. Caſ.* 499.

Unleſs he (the certificate perſon) *ſhall really and* bona fide *take a leaſe*] *T.* 9 *G. K.* and *Little Dean.* It was ſtated, that a man took a leaſe for 7 years, and objected that it might be only by parol, and that it is void for the whole, and there can be no ſettlement. But by the court: Then it ſhould have been ſtated to be by parol; we muſt take it to be by deed, otherwiſe it is no leaſe at all. And the order was confirmed. *Str.* 555.

H. 8 *G. Cranley* and *St. Mary Guilford.* Upon a ſpecial order of ſeſſions it was ſtated, that a certificate man agreed with the leſſee of a mill, that he ſhould occupy the mill, and pay 12l a year; that there was no under leaſe or aſſignment, but in purſuance of that agreement the certificate man occupied the mill two years, and paid the rent. The ſeſſions adjudged it no ſettlement. But by the court: The order muſt be quaſhed: for if this be not an abſolute leaſe for a year (as *Eyre* J. ſaid it was, the rent being reſerved as rent for a year), yet it is undoubtedly a leaſe at will, which is ſufficient to gain a ſettlement. *Str.* 502.

A leaſe of a tenement] *M.* 9 *G. St. John's Hertford* and *Amwell.* A certificate man took a farm of 10l a year, part of which was in *St. John's*, and part in *Amwell*; but the greateſt part together with the houſe, being ſtated to lie in the pariſh that received his certificate, the court held it a ſettlement there. *Str.* 529. *Caſ. of S.* 148.

H. 8 *G.* 2. *St. Mary Calendre* and *St. Thomas.* It was ſaid, that theſe acts have been liberally expounded, and that renting 10l a year in different pariſhes will avoid a certificate. 1 *Seſſ. C.* 315.

E. 4 *G* 2. Caſe of *Stapleford* in *Lieceſterſhire*. A perſon took 3 l a year in the place he was certificated to, and 40 l a year in the next pariſh, but lived where the 3 l was; and it was held a ſettlement there. *Str.* 849.

E. 15 *G.* 2. *Bowling* and *Bradford*. A certificate perſon rented and reſided upon a tenement of 9 l a year in *Bowling*, and at the ſame time rented lands of 11 l 15 s a year in another pariſh. It was objected, that in order to avoid a certificate, it is neceſſary to rent 10 l a year in the pariſh where the certificate perſon inhabits; for the act ſays, that no perſon coming into any pariſh by certificate, ſhall gain a ſettlement in ſuch pariſh, unleſs he ſhall take a leaſe of a tenement of 10 l a year, or execute an annual office *in ſuch pariſh*. By the court: Renting 10 l a year is only required in general, and is not confined to the particular pariſh: The words *in ſuch pariſh* relate only to executing an annual office. And it is within the ſame reaſon (namely, the ſubſtance and credit of the man) whether he rents that value in one pariſh, or in different pariſhes. *Burrow's Settl. Caſ.* 177.

Upon the whole, notwithſtanding what hath been ſo often mentioned above, as to the ſuppoſed *ſufficiency* of the tenant to ſtock the tenement upon which he comes to reſide, yet the ſtatute takes no notice of that; and therefore, although it may be a good general reaſon to ſuppoſe that a perſon of ſuch ability is not likely to become chargeable, yet ſuch ability doth not ſeem to enter as any neceſſary ingredient into the ſettlement; and if the landlord will truſt the tenant, it ſeemeth that the pariſh hath no remedy, unleſs the juſtices ſhall adjudge it a fraud. And in the caſe of *giving ſecurity* for the rent, it hath been determined as follows:

T. 10 *G* 2. *Butley* and *Benhall*. A perſon rented a windmill at 14 l a year; but gave ſecurity for the rent: It was objected, that this was no ſettlement, for that the foundation thereof is the credit of the party, which fails in this caſe. But by the court: Giving ſecurity for the rent doth not alter the caſe; for he that has credit to give ſecurity, has credit to pay rent. 1 *Seſſ. C.* 320. *Andr.* 3. *Bur. Settl. Caſ.* 107.

And it may be obſerved upon this caſe, that it requires no great *ability* to ſtock a windmill.

xii. Of ſettlement by a perſon's own eſtate.

By the 13 & 14 *C.* 2. *c.* 12. *On complaint within* 40 *days after any perſon ſhall come to ſettle in any tenement under* 10 *l a year, two juſtices may remove him.*

And by the 9 & 10 *W. c.* 11. *No certificate perſon ſhall gain a ſettlement, but by renting* 10 *l a year, or executing an annual office.*

Upon which two ſtatutes the following caſes are conſiderable:

Perſon ſettled by his own eſtate.

1. *How far a perſon, having an eſtate of his own, though under* 10 *l a year, ſhall gain a ſettlement thereby, within the ſaid ſtatute of the* 13 & 14 C. 2?

E. 11 *An. Harrow* and *Edgeware.* A perſon ſettled at *Harrow*, went into the pariſh of *Edgeware*, and purchaſed a copyhold eſtate for life, and lived therein 4 or 5 years, and died. And as this was a tenement under 10 l a year, the queſtion was, upon the 13 & 14 *C.* 2. Whether this gained him a ſettlement at *Edgeware?* It was argued, that the ſtatute hath been always held to mean an eſtate which a man takes to farm, and not an eſtate of his own; for if a perſon has a freehold, he cannot be removed from it, though not worth 10 l a year. And by *Parker* Ch. J. and the court: Where a perſon has an eſtate for life, or an eſtate of inheritance of his own, that gains him a ſettlement, though leſs than 10 l a year; for he cannot be removed, and if he cannot be removed, he certainly gains a ſettlement. *Foley.* 257.

E. 13 *G.* 2. *Hasfield* and *Tirley.* On a ſpecial order of ſeſſions, relating to the ſettlement of a boy of 8 years and a girl of 6, it was ſtated, that the mother of theſe children had an eſtate of 4 l a year in *Tirley*, where ſhe and her huſband lived and had theſe children: that ſhe dying, the huſband became tenant by the curteſy: and whilſt ſuch, he took 30 l a year at *Hasfield*, and lived one year there with his two children, and then died: that the children being found with their grandmother at *Tirley*, were both removed to *Hasfield:* which order the ſeſſions confirmed. And now the court, upon argument, confirmed the orders as to the girl, but quaſhed them as to the boy. For as to the boy, he was tenant in fee of the 4 l a year. And though it was not ſtated, that he was actually upon that ſpot, yet it was enough, that he had ſuch an eſtate in the pariſh, from which he could not be removed. But as to the daughter, it is otherwiſe; ſhe could demand

no

no maintenance out of her brother's eſtate; and it was never yet determined, that children ſhould go to a grandmother for nurture. She may indeed be charged to contribute to their relief in the pariſh where they are ſettled. *Str.* 1131. *Burrow's Settl. Caſ.* 147.

T. 7 *G.* 2. *Sundriſh* and *Hever*. *Thomas Perch* by indenture demiſed to *Thomas Gates* the father, a cottage at 5s a year, which was the full value, for 99 years. The leſſee held it till his death, and deviſed it to *Thomas Gates* his ſon. And the queſtion was, Whether the ſon, as executor, being intitled to the term, ſhall gain a ſettlement by inhabiting in ſuch cottage? By the court: Where a man lives upon his own, is a caſe of a very tender nature, and the law will not unſettle him: Perſons to be removed under the ſtatute of *C.* 2. are thoſe that wander from place to place, and not thoſe who live upon their own eſtate: And adjudged, that he gained a ſettlement. 1 *Seſſ. C.* 200. *Str.* 983. *Burrow's Settl. Caſ.* 7.

E. 3 *G. South Sydenham* and *Lamerton*. A perſon poſſeſſed of a leaſe for years dies inteſtate; if the next of kin ſhall be ſaid in law to be ſettled there, was the queſtion: It was held not; he has only a right, which he muſt purſue by taking out letters of adminiſtration, and no right is veſted in him till that is done. *Caſ. of S.* 103.

T. 10 *G.* 2. *Farringdon* and *Widworthy*. The pauper being ſettled at *Farringdon*, removed to *Widworthy*, and lived there with his father in a cottage houſe of 30s a year, working as a day labourer. The father died inteſtate, poſſeſſed of the ſaid cottage for the reſidue of a term, determinable on lives, leaving the pauper and another ſon. The pauper's brother took his diſtributive ſhare of his father's eſtate in goods, and the pauper himſelf, after the father's death, continued in the cottage for five or ſix years, until the leaſe was determined: After which, and ſince the making out the order for his removal, he took out adminiſtration to his father. And the ſeſſions quaſhed the ſaid order, adjudging him to be ſettled at *Widworthy*. But by the court: At the time of making the firſt order, he had gained no ſettlement at *Widworthy*; becauſe nothing veſted in him before adminiſtration was granted to him. If ſo, then that order for removing him was a good order when made. And the ſeſſions ought not to have quaſhed it; though adminiſtration had been afterwards taken out. For they could not quaſh a good order, upon a matter which happened *ex poſt facto*. If this adminiſtration really gained him a ſettlement, there ought to have been a new order of two juſtices to remove him again to *Widworthy*.

But taking out adminiſtration after the term was expired, could never give him an intereſt in the expired term. And whilſt the term ſubſiſted, not having taken out adminiſtration, he was in poſſeſſion merely as a tenant at will. He was removeable by the pariſh; and his right would have been without foundation if adminiſtration had been granted to any one elſe. *Andr.* 4. *Burrow's Settl. Caſ.* 109.

M. 4 *G. Murſley* and *Grandborough.* Sir *John Forteſcue* demiſed a cottage of 20s a year to one *Eden* for 99 years, reſerving 12d rent: *Eden* aſſigns the term to one *Gadden* in truſt for his wife for life, and then in truſt for his ſon, during the remainder of the term: The wife dies. Afterwards the ſon dies, leaving a wife, who, as adminiſtratrix to her huſband, became intitled to this term, and ſhe grants this cottage for 24 years, excepting two rooms, in which two rooms ſhe lives, and marries one *John Chappel.* The queſtion was, Whether *Chappel*, as huſband of an adminiſtratrix, who was intitled to the truſt of a term only, and being intitled to a chattel in another's right only, was removeable by the 13 & 14 *C.* 2? And by the court, he is not; this is not a taking of a tenement under 10l, for the 12d is not reſerved as a rent, but only an acknowledgment uſually paid on long leaſes. The caſe of a copyhold is ſtronger than this, for that is but an eſtate at will. To ſtrip the man of his own, is the way to make him chargeable, for he may not be able to let it. Therefore the orders which adjudged this to be no ſettlement were quaſhed. *Str.* 97. 1 *Seſſ. C.* 122.

M. 11 *G. Aſhbrittle* and *Wyley.* A poor man built a cottage, upon the waſte belonging to my lord *Pembroke*, without his licence, who never offered to diſturb the man in his poſſeſſion, and he lived in this cottage for 30 years, and by his will left three guineas in the hands of his executors to purchaſe this cottage of my lord *Pembroke.* Upon his death, *Elizabeth* his only child, and heir at law, entred into the cottage, and after married one *Barrow*, and lived in the cottage, and they were in quiet poſſeſſion for three quarters of a year, and then ſold it. The queſtion was, Whether the daughter, and her huſband *Barrow*, had gained a ſettlement by virtue of this inhabitancy, in the pariſh of *Wyley*, in which their cottage was? Mr. *Reeve* argued, that this inhabitancy gained no ſettlement: The cottager was a diſſeiſor, and had no right to build upon the waſte, and was at any time removeable by the lord of the waſte, and if he might have been removed within 40 days, his long poſſeſſion ſhall give him no title; for he muſt only be conſidered as a tenant

tenant at will, and conſequently his continuance upon the cottage, though never ſo long, could give him no ſettlement: and if the cottager had no right of ſettlement, none claiming under him ſhall be in a better condition. The ſtatute of 31 *El.* prohibits the building of cottages, therefore the erection of one is unlawful, and ſhall have no privilege or encouragement. I admit if one inhabits by virtue of a leaſe, or other good title, for 40 days, he gains a ſettlement. But the inhabitancy in this caſe was without any good title, and conſequently can gain no right of ſettlement. Theſe objections were anſwered by the court, who held it clearly to be a good ſettlement. And though it was further objected, that the cottager himſelf was ſenſible he had no right, by his deviſing money for the purchaſe of a term under the lord of the waſte, yet it was over-ruled. And by all the court it was held, that when a man hath ſuch a poſſeſſion as he cannot be removed from, and hath enjoyed that poſſeſſion 40 days, he thereby gains a ſettlement; and that is the reaſon why a copyholder or leſſee for years gains a ſettlement by an inhabitancy for 40 days; for in thoſe caſes, the juſtices of the peace cannot determine his right: this preſent caſe is very ſtrong; for the 30 years poſſeſſion of the cottager, without interruption, would have been a good title in an ejectment; and for that reaſon the juſtices of the peace cannot determine his title. It appears upon the face of the order, that the cottager had a good title in ejectment, and in any caſe but in a real action. Lord Ch. J. *Raymond* ſaid, he had known recoveries upon a 20 years quiet poſſeſſion, and 20 years poſſeſſion is a title to a plaintiff in ejectment as well as to a defendant. After ſo long a poſſeſſion as this, it ſhall be preſumed that the cottager had a licence to erect the cottage; but this caſe goes further, for beſides the 30 years quiet poſſeſſion of the cottage, here is a deſcent caſt upon the daughter who was heir to the cottager, and *prima facie* it is an inheritance in the daughter; and an eſtate by diſſeiſin is in law a good eſtate, and a fee ſimple, till it be defeated. Wherefore all the court held, that the juſtices had no juriſdiction in this caſe; for they could not examine into the title to the land. And the ſettlement in the pariſh of *Wyley* was adjudged to be good. 2 *Seſſ. C.* 115. *Str.* 608.

M. 9 *G.* 3. *Bitton* and *St. Philip and Jacob.* The pauper, *George Battman*, built a cottage upon the waſte, without leave of the lady of the manor; was not rated, nor paid any taxes; but continued nineteen years and an half in poſſeſſion. About 20 years ago, the pauper *Battman* was

was turned out of poſſeſſion of the ſaid cottage, by an ejectment brought by a perſon claiming the ſame under a mortgage thereof made by the ſaid *Battman* for the ſum of 15l: And ſome time after that, (which was more than 20 years ago,) the ſaid *Battman* and the mortgagee ſold the ſaid cottage to one *Williams* for 28l; and the ſaid *Battman* had 5l, part of the purchaſe money.——It was urged, that this gained no ſettlement to *Battman* the pauper: That he had no right to this cottage, either legal or equitable. He had no leave from the owner of the ſoil, to erect it. He never was rated, nor paid any taxes for it. The value of this cottage is not ſtated. If he had purchaſed it, for a conſideration under 30l, it would not have given him a ſettlement after he ceaſed to inhabit it. But here he has only ſtolen it: And ſurely he ought not to be in a better condition as a thief, than he would have been as a purchaſer. If it were admitted, that 20 years poſſeſſion would make a title, yet no poſſeſſion is here ſtated. And the court cannot preſume it. The poſſeſſion expreſsly here ſtated falls ſhort of 20 years: It is only nineteen and an half.—But the court were all of opinion, that it appeared to be a poſſeſſion of more than 20 years. He was himſelf in poſſeſſion nineteen years and an half: And the mortgagee's poſſeſſion muſt be alſo conſidered as his poſſeſſion. And it was adjudged a good ſettlement. *Burrow's Settl. Caſ.* 631.

H. 14 *G.* 3. *Stockley Pomroy* and *Cheriton Fitzpayne.* The grandmother of *John Whitten* the pauper, being poſſeſſed of an eſtate in the pariſh of *Cheriton Fitzpayne* for a term of years determinable on the death of *Sarah Whitten* mother of the ſaid pauper, deviſed to him 10l a year out of her eſtate during his ſaid mother's life. The teſtatrix died, leaving at her deceaſe the ſaid leaſehold eſtate, and effects to the amount of about 32l. The pauper, being conſiderably in debt, in order to avoid his creditors, went to reſide in the ſaid pariſh of *Cheriton Fitzpayne*, and there reſided with his mother on the ſaid leaſehold eſtate, and carried on the buſineſs of a jobber of cattle, during the continuance of the annuity, and while the ſame was due and payable, for the ſpace of 40 days and upwards. It was argued, that hereby the pauper gained a ſettlement: That it was a rent charge upon this leaſehold eſtate; a ſpecific charge, and gave a ſufficient property to gain a ſettlement: He had a right to come upon it to diſtrain, and the removal of him from it would amount to a diſſeiſin; and was in a much better condition than a perſon who has only credit enough to rent 10l a year. But by lord *Mansfield:*

There is no colour for adjudging the pauper to have gained a ſettlement in *Cheriton Fitzpayne*. He did not go thither, to reſide upon his own: He abſconded there, to avoid his creditors: This was no ſpecific legacy, it is payable out of the whole perſonal eſtate. But if it were a ſpecific legacy, a ſpecific legatee has no right to go and live upon the eſtate. If it had been a rent charge out of a freehold, it would not give a right to live upon ſuch freehold. But this man had only a pecuniary demand: There was no colour for his going to live upon this leaſehold eſtate as his own. *Burr. Settl. Caſ.* 762.

E. 14 *G.* 3. *South Stoke* and *Painſwick*. The widow of a man who died ſeiſed of a houſe and orchard in *South Stoke*, entred and reſided therein for ſeven years, without any aſſignment of dower; and then married a ſecond huſband, who reſided in this houſe with her about two years, and then died. It was argued, that ſhe gained no ſettlement hereby, and conſequently communicated none to her ſecond huſband. It is like the caſe of a next of kin, who cannot acquire a ſettlement before adminiſtration granted. A right of dower is no eſtate at all; nor is it like to an equitable eſtate; it is like a title to an action. By lord *Mansfield* and the court: The mere *right* of dower gained a ſettlement to herſelf, ſhe having by *Magna Charta* a right to remain forty days in the houſe; and being irremoveable for forty days, ſhe thereby gained a ſettlement. But ſhe could not communicate it to her ſecond huſband; as a tenant in dower has no right to *enter* till dower is aſſigned. *Bur. Set. Caſ.* 783.

T. 14 *G.* 3. *Natland* and *Stainton*. Two juſtices remove *Thomas Gibſon* and *Hannah* his wife from *Natland* to *Stainton* in the county of *Weſtmorland*. The ſeſſions upon appeal quaſhed the order, but directed the caſe to be drawn up for the opinion of the judge of aſſize, and agreed to be determined by his opinion. The caſe was, *Alan Court* by his will deviſed his eſtate at *Natland* to his wife during her widowhood; and after the determination thereof, to truſtees to ſell and divide the money equally among his children, of whom the ſaid *Hannah* wife of the pauper was one. The teſtator died. The widow entred; and let part of the eſtate to farm, reſerving to herſelf a dwelling-houſe, which was worth about 20 s a year. The pauper *Gibſon*, being reduced in his circumſtances, came with his wife to live with her mother the widow in part of the ſaid dwelling-houſe. The widow died in *June* 1769, the ſaid pauper and his wife continuing in poſſeſſion of that part of the dwelling-houſe aforeſaid. In about a month after the death

death of the widow, the truſtees contracted for the ſale of the eſtate, and in *February* following a conveyance was executed, the children of the ſaid deviſor being no parties thereto. The pauper paid no rent to the widow, but from her death he paid rent to the purchaſer until *May-day* following, when he quitted the premiſes. Upon this it was inſiſted, that as the pauper and his wife inhabited in *Natland* in part of the houſe deviſed as aforeſaid, from her mother's death in *June* till the ſame was conveyed in *February* following, and ſhe being intitled to a diſtributive ſhare of the money to be raiſed by ſale of the ſaid deviſed premiſes, the pauper was not removeable during that time, and conſequently gained a ſettlement in *Natland*. The opinion of the judge was given in writing in theſe words: "I have heard counſel on both ſides, and am of opinion "the ſettlement is in *Natland*. *H. Gould.*" Afterwards, a rule was obtained in the court of king's bench, to ſhew cauſe, why the order of ſeſſions aforeſaid ſhould not be quaſhed. But the counſel, inſtead of ſhewing cauſe, objected againſt the court's entring at all into the matter; for the judge having heard counſel, and given his opinion in writing, this ought to be final: otherwiſe no judge of aſſize will ever hereafter accept a reference of this kind. The court ſaw it in the ſame light. And lord *Mansfield* obſerved, that here was a manifeſt conſent of the parties to this reference to the judge, and therefore it was like all other references by conſent. He intimated that, as at preſent adviſed, he was of opinion with the judge. However, after this conſent, he thought it very improper to take the matter up again. *Bur. Settl. Caſ.* 793.

E. 21 *G.* 3. *Walcott* and *St. Michael's Bath.* The pauper being legally ſettled in *St. Michael*'s, and reſiding there, conveyed two houſes, whereof he was ſeiſed in fee at *Walcott*, to truſtees; in truſt to ſell and pay mortgages and other debts, and to pay the ſurplus money, if any, to the pauper. Some ſhort time after, one of theſe houſes becoming void, the truſtees, having poſſeſſion thereof, employed a woman to clean and air the houſe, and delivered to her the key for that purpoſe; which having done, ſhe placed the key among ſome things of her own, intending afterwards to re-deliver it to the truſtees. But the pauper's wife took it from thence, and took poſſeſſion of the vacant houſe, and ſhe and her huſband went and lived there about a year and three quarters. One of the truſtees, ſeeing her conveying her goods thither, gave her notice that ſhe was doing wrong, not having the conſent of either the truſtees or creditors. But the ſaid houſe ſtill remained unſold, and it

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was ſtated that the value of the premiſes was 650l, and the debts 880l. It was argued, that the beneficial intereſt in the eſtate remained in the pauper till ſold; and for this was cited the caſe of *Natland:* and reſiding upon it as his own, he was not removeable from it, and conſequently gained a ſettlement. And it was likned to the caſe of a mortgage. —By lord *Mansfield* (unto which the reſt of the court aſſented): If the eſtate on which a pauper reſides is ſubſtantially his property, this is ſufficient, whatever form of conveyance there may be; and therefore a mortgagor in poſſeſſion gains a ſettlement, becauſe the mortgagee, notwithſtanding the form, has but a chattel, and the mortgage is only a ſecurity. It is an affront to common ſenſe to ſay the mortgagor is not the real owner. But here, What intereſt had the pauper in this eſtate? He made an immediate conveyance to truſtees, not a mortgage, to ſell and pay off two mortgages and other debts; and when this conveyance was made, it was ſo doubtful whether there would be any ſurplus, that the deed ſays, he ſhall have the ſurplus, *if any*. He had only a chance of a reſidue, and had not a right to continue a moment in poſſeſſion. A mortgagor has a right to the poſſeſſion, till the mortgagee brings an ejectment. After the mortgagee has got into poſſeſſion, he (the mortgagee) might gain a ſettlement. There is ſtill another, and a ſtronger ground, in this caſe; for the poſſeſſion was gained by fraud. *Douglas.* 608.

2. *That a purchaſe under the value of* 30*l ſhall not gain a ſettlement.* Purchaſe under 30l.

By the 9 *G. c.* 7. *After* March 25, 1723, *No perſon ſhall be deemed to acquire any ſettlement in any pariſh or place, by virtue of any purchaſe of any eſtate or intereſt in ſuch pariſh or place, whereof the conſideration for ſuch purchaſe doth not amount to the ſum of* 30*l* bona fide *paid, for any longer or further time, than ſuch perſon ſhall inhabit in ſuch eſtate, and ſhall then be liable to be removed to ſuch pariſh or place, where he was laſt legally ſettled before the ſaid purchaſe and inhabitancy therein.*

No perſon] And as this ſhall not ſettle the perſon purchaſing for longer time than he continues in the purchaſed eſtate, ſo it ſhall not ſettle any of his children, by any derivative ſettlement from him. As in the caſe of *Salford* and *Over-Norton*, *H.* 4 *G.* 3. *Peter White* the younger and *Mary* his wife, were removed by order of two juſtices from *Salford* to *Over-Norton*, as likely to become chargeable to *Salford*, and as being laſt legally ſettled in *Over-Norton*. On appeal, the ſeſſions diſcharge this order, and

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ſtate ſpecially, That *Peter White* the pauper's father, being ſettled in *Over-Norton*, in the year 1726, for the conſideration of 29l, purchaſed a tenement in the pariſh of *Salford*. His ſon the pauper was born there in the year 1730, and lived with his father therein till about 1754, when he married and left his father's family, and lived in a ſeparate tenement at *Salford*, without having gained any ſettlement, but what he derived from his father. On ſhewing cauſe, it was urged in ſupport of the order of ſeſſions, that here was a derivative ſettlement of the ſon at *Salford*, and he muſt be ſent to that place which was the place of his father's ſettlement at the time of the ſon's removal. Before this ſtatute, any purchaſe would have made a ſettlement; and this is a ſettlement to the father, whilſt he inhabits on the eſtate; and the ſon's derivative ſettlement muſt be the ſame place, as his father was irremoveable from it, at the time when the ſon was born. The father's ſettlement at *Over-Norton* may indeed poſſibly revive, if he quits his eſtate at *Salford:* But it doth not appear that he ever will quit it, and *Salford* is his preſent ſettlement. He cannot have two at once; nor can he be removed from his own againſt his will. And the ſon could have no ſettlement at *Over-Norton*; for the father never had any there ſince the ſon was born. On the other hand, it was argued, that the father's ſettlement is at *Over-Norton*, and is only ſuſpended during his inhabitancy upon the purchaſe at *Salford:* and if the ſon leaves the father, and gains no ſettlement for himſelf, he muſt be ſent to the place which was the father's ſettlement at the time when the ſon left him. The ſon is become emancipated from the father; and the father himſelf is liable to be removed, as ſoon as he leaves the very ſpot which he purchaſed. Lord *Mansfield* delivered the reſolution of the court: The queſtion is, Whether the pauper ought to have remained in the pariſh of *Salford*, or have been removed from thence to the hamlet of *Over-Norton* as his laſt legal ſettlement? And we are of opinion, that no ſettlement of the father was gained in *Salford* by the purchaſe, but only during the time of his inhabiting in the purchaſed premiſſes. And this would have been equally the caſe, if the act had never been made: For he could not have been removed from his own eſtate, though he had no ſettlement in the pariſh where it lay. So that the father's ſettlement (if it may be ſo called) in *Salford* was only temporary, and did not extinguiſh his ſettlement at *Over-Norton*. And the only ſettlement which the ſon could derive from his father was at *Over-Norton*; for there could be no derivative ſettlement from the father

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at *Salford*, the father himſelf having no ſettlement there, but being only irremoveable from his own eſtate. And this may be illuſtrated by a ſuppoſition, that the ſon had not reſided in *Salford*, but had gone to live in a third pariſh, and had there been likely to become chargeable; and the queſtion had ariſen, Whether he ought to be removed to *Salford* or *Over-Norton*? He could not poſſibly in ſuch caſe have been removed to *Salford*, becauſe ſuch removal would have been concluſive upon *Salford*, and he would remain ſettled there for ever: Conſequently, he muſt have been removed to *Over-Norton*. Which ſhews, that he can have acquired no ſettlement in *Salford*, by virtue of his father's purchaſe, even during the time of his father's reſidence upon it. *Burrow's Settl. Caſ.* 516. *Black. Rep.* 433.

By virtue of any purchaſe] *T.* 30 & 31 *G.* 2. *Uffculme* and *St. Sidwell's*. *John Hine*, the pauper, purchaſed a tenement in *St. Sidwell's*, for 12 l. He lived there with his family; and was rated to the land tax and to the poor rate, thus, "Occupier, late widow *Hooper's*, now *John* "*Hine's* tenement." He paid the rates. Afterwards, he ſold the ſaid tenement, and went, with his family, to the pariſh of *Uffculme*; from whence they were removed to the pariſh of *St. Sidwell*. The ſeſſions, being of opinion, that the ſaid *John Hine* did not gain a ſettlement in *St. Sidwell's*, by being rated and paying as aforeſaid, the conſideration of the ſaid purchaſe being under 30 l, did therefore vacate the ſaid order. It was moved to quaſh the order of ſeſſions. Lord *Mansfield* Ch. J. delivered the reſolution of the court: It will firſt be neceſſary to conſider, how the law ſtood before the making of the ſtatute of the 9 *G.* Now before that act, no man was removeable from his own; be the value of the purchaſe of it never ſo ſmall and inconſiderable. And there were then other ways alſo of gaining ſettlements, as by ſerving a publick annual office, and being charged with and paying a ſhare towards the publick taxes or levies and burdens of the pariſh. But this act was levelled only againſt fraudulent purchaſes of ſmall value, made in order to gain ſettlements. And it declares, that purchaſes of leſs than 30 l value, *bona fide* paid, ſhall not gain a ſettlement for any longer time than the inhabitancy thereupon ſhall continue. After which, the purchaſer ſhall be liable to be removed to his former legal ſettlement, prior to ſuch purchaſe and inhabitancy upon it. And the eſtabliſhed conſtruction of this act hath been, purſuant to the intention of the legiſlature, to prevent fraudulent purchaſes. And therefore it hath

hath been conſidered not to extend to what are called purchaſes in law, as deviſes, or other ſuch methods of coming to eſtates; becauſe they are not fraudulent. Whereas the preſent ſettlement is claimed, by being rated and having paid towards the public taxes of the pariſh: Which is quite a different method of gaining a ſettlement. The man himſelf is here perſonally rated. The tax is laid upon a tenement, "late *Hooper*'s, now *John Hine*'s." But if he had been only rated as *occupier*, without adding his name, yet ſurely that would imply notice of the man's being an inhabitant. And we are all clear, that this act only means to put a negative upon a perſon's gaining a ſettlement by making a ſmall purchaſe, with a fraudulent intention to gain a ſettlement thereby, in the pariſh where ſuch purchaſe is made; and that it doth not affect any other method of gaining a ſettlement. And indeed it is but reaſonable, that perſons who have been rated and have paid towards the publick taxes and levies of a pariſh ſhould receive aſſiſtance from that pariſh, when they become neceſſitous themſelves. *Burrow's Settl. Caſ.* 430.

Purchaſe] *H.* 3 *G.* 2. *Sabridgeworth* and *Aldbury*. *Edward Sheppard*, the pauper, was born at *Sabridgeworth*. And his father being ſeiſed in fee of a copyhold cottage in *Aldbury*, which uſed to be let at 25 s a year, did, about a year and a half before the removal, ſurrender the ſaid copyhold cottage to his ſaid ſon *Edward Sheppard* and his heirs, who were thereupon admitted, and lived upon the ſame about a year and a half, and then ſold the ſame for 14 l 2 s 6 d, being the full value thereof. The two juſtices, and alſo the ſeſſions, were of opinion, that this gained no ſettlement, being not ſuch a purchaſe as the act intended for 30 l *bona fide* paid. It was moved to quaſh the orders of the juſtices; for that this eſtate in *Aldbury* was the pauper's own by a ſurrender from his father, and there was no difference between a ſurrender from a father and a deſcent. But the court denied the motion, without ſo much as making a rule to ſhew cauſe. For they not only thought that the ſurrender looked fraudulent, but they ſaid that the intent of the ſtatute was, to prevent perſons gaining ſettlements who were any ways likely to be chargeable, and therefore provided, that they ſhould be able to lay out 30 l in a purchaſe. And both the orders were confirmed. 2 *Seſſ. C.* 161. 1 *Barnardiſt.* 297. *Burrow's Settl. Caſ.* 56.

But in the caſe of *Marwood* and *Kentiſbury*, *H.* 29 *G.* 2. On a motion to quaſh an order of two juſtices, and an order of ſeſſions confirming the ſame, for the removal of *Thomas Conibear* and *Mary* his wife from *Kentiſbury* to *Marwood*:

Marwood: The caſe was; The ſaid *Mary* had conveyed to her by her father, in conſideration of natural love and affection, a cottage, garden, and plat of ground at *Kentiſbury*, for the reſidue of a term of 99 years then determinable on the death of one *Joan Slocombe*, the conſideration of which purchaſe originally in the year 1689, amounted only to 20 ſhillings. *Mary* and her huſband entred upon the premiſſes, and continued thereon for ſeveral years, until the leaſe determined by the death of the ſaid *Joan*. Upon which, they were removed from *Kentiſbury* to *Marwood*. It was urged, that the original conſideration money not being 30 l, nor any conſideration paid on the ſubſequent conveyance to the daughter, it was ſuch a purchaſe as the ſtatute intended ſhould not gain a ſettlement. Unto which it was anſwered, that the intention of the legiſlature was not to extend the law to every kind of purchaſe, according to the extenſive legal ſenſe of the word purchaſe; for the very words import, that it is to be a pecuniary purchaſe, or where an equivalent is paid for an eſtate, and not where a man comes to an eſtate by will, donation, ſettlement on marriage, or the like. But if the word purchaſe were to be taken in that extenſive legal ſenſe, yet there is a difference in the preſent caſe; and the true queſtion will be, what eſtate the *huſband* had: For if the huſband did not take by purchaſe, it will be of no conſequence how the wife took; becauſe he will gain a ſettlement by the inhabitancy, and ſhe cannot be ſeparated from him. He is in by act of law, in the right of his wife; and not by any act, conſent, or traffick of his own. By *Ryder* Ch. J. If I had any doubt, I would not give an opinion now. This is not a purchaſe within the meaning of the act. The word purchaſe is not to be taken in the largeſt extent of it, but is confined to caſes where a pecuniary conſideration is paid. Otherwiſe, no deviſe, or gift, or ſettlement on marriage, would gain a ſettlement, unleſs there were a pecuniary conſideration paid. The intention of the act was, to prevent ſettlements by purchaſes for ſmall money conſiderations. In the preſent caſe, the huſband is not to be conſidered as a purchaſer, and therefore he acquired a ſettlement in *Kentiſbury*. And by the court unanimouſly, the orders of the juſtices were quaſhed. *Burrow's Settl. Caſ.* 386.

And in the caſe of *Ingleton* and *Aſtwick*, *E.* 6 *G.* 3. *Richard Speddy* and *Roſe* his wife, reſiding under a certificate at *Aſtwick*, the father of the ſaid *Roſe* conveyed to her, in conſideration of natural love and affection, a cuſtomary cottage at *Aſtwick*, to the uſe of herſelf for life, and after

her deceaſe to the uſe of *Jane* her daughter and her heirs. The ſaid *Richard* and *Roſe* his wife entred upon and continued in poſſeſſion of the cottage for 16 years, and then purchaſed of their daughter *Jane* her remainder in fee of the premiſſes for 5 l, and afterwards ſold the whole for 20 guineas. Afterwards, the ſaid *Richard Speddy* and *Roſe* his wife becoming actually chargeable, were removed by order of two juſtices to *Ingleton* which gave the certificate. And the ſeſſions, being of opinion that the ſaid *Richard* and his wife gained no ſettlement in *Aſtwick*, confirmed that order. It was moved to quaſh theſe orders. And on ſhewing cauſe, they were given up by the counſel as indefenſible, on the authority of the caſe of *Marwood*; this being a voluntary ſettlement, and not a purchaſe within the intent of the ſtatute. *Burrow's Settl. Caſ.* 560.

So in the caſe of *Ilmington* and *Mickleton*, *T.* 6 *G.* 3. *Elizabeth Stanley* purchaſed a leaſehold tenement in the pariſh of *Mickleton*, for the ſum of 6 l, for the remainder of a term of 1000 years. She reſided upon the ſame about 9 years, and then was married to *Theophilus Evans*, who reſided with her upon the ſaid tenement about 16 years; then he died; and after his deceaſe, ſhe continued upon the premiſſes for ſeveral years, and at laſt ſold the ſame for the ſum of 6 l; and after ſuch ſale, was removed by order of two juſtices to *Ilmington*, the place of her huſband's ſettlement before their intermarriage. And the ſeſſions, upon appeal, confirmed that order. It was moved to quaſh theſe orders. On ſhewing cauſe, it was urged in ſupport of the orders, that this was a purchaſe by the wife, clearly within the words of the ſtatute, under the value of 30 l, and the huſband had no claim to it, but by virtue of that purchaſe. The term ſurvived to the wife, on her huſband's death. And if he had ſurvived her, he could not have had it without taking out adminiſtration to his wife. On the contrary, it was anſwered, that this, though a new caſe, yet was within the reaſon of the former caſes. In caſes of deſcent, a ſettlement is gained, tho' the original purchaſe be under 30 l value: And there is as much reaſon why a ſettlement ſhould be gained in the preſent caſe. This woman had an eſtate veſted in her, when *Evans* married her; which, upon the marriage, veſted in him. The huſband gained a ſettlement in *Mickleton*, by 40 days reſidence upon his own eſtate; and his ſettlement communicated itſelf to the wife. And of this opinion was the court. And both the orders were quaſhed. *Burrow's Settl. Caſ.* 566. *Black. Rep.* 598.

The ſum of 30 l bona fide *paid*] *E.* 13 *G. St. Paul's Walden* and *Kempſton*. There was a ſpecial order ſtated at ſeſſions. A perſon purchaſed a copyhold tenement in *St. Paul's Walden*; which with the fine, and fees paid to the court, amounted to 30 l; and it appeared by the ſame order, that the officers of the pariſh of *Kempſton* had given him 40 s towards paying his fine and fees. Therefore it was inſiſted, that this was fraudulent, and not a good purchaſe within the ſtatute, ſufficient to gain a ſettlement. But by the whole court: We cannot take notice of its being fraudulent, unleſs the juſtices had adjudged it ſo. And the order was confirmed. *Foley.* 238.

T. 8 & 9 *G.* 2. *Tedford* and *Waddingham*. Two juſtices remove *Francis Gill* from *Waddingham* to *Tedford*. Upon appeal, the ſeſſions ſtated ſpecially a caſe to be laid before the judge of aſſize; *viz.* That *Francis Gill* being ſettled at *Tedford*, contracted with *John Atkinſon* for a houſe and curtilage in *Waddingham* for 39 l, which was conveyed to *Gill* and his heirs accordingly. *Gill* paid 9 l, and *Iſaac Briſtol* paid the remaining 30 l, to *Atkinſon* by *Gill*'s order. About a month after the execution of the conveyance, *Gill* mortgaged the premiſſes to the ſaid *Iſaac Briſtol*. *Gill* continued in poſſeſſion about four years after the mortgage. Then *Briſtol* entred, by virtue of the ſaid mortgage and releaſe of the equity of redemption. Then the inhabitants of *Waddingham* procured *Gill*, being out of poſſeſſion, to be removed to *Tedford*. The order of ſeſſions recites, that whereas the judges of aſſize had not time to hear and determine it, and whereas the parties agreed this to be the true ſtate of the caſe; therefore upon hearing counſel and further evidence on both ſides, this court doth declare and adjudge, that the purchaſe made by *Gill* was fraudulent, and that the ſettlement of *Francis Gill* is at *Tedford*; but that the pariſhioners of *Tedford* are no ways concerned in the ſaid fraud. —— It was moved to quaſh theſe orders; and urged, that the juſtices in their adjudication depart from their premiſſes. For the act doth not extend to any caſe where the conſideration exceeds 30 l. But here the conſideration is above 30 l. And it appears to have been *bona fide* paid by *Gill*; part by himſelf, and part by his order (though by the hands of *Briſtol*). It doth not even appear that *Briſtol* had lent it to him; therefore it ſhall be taken that it was *Gill*'s own money. And no circumſtances of fraud are ſtated: And therefore if this concluſion of the juſtices at ſeſſions be drawn from the premiſſes ſtated, it is a concluſion contrary both to the law and to the fact; and the court will themſelves judge of it and

ſet it right. —— On the other ſide it was argued, whether the ſum paid as conſideration money was greater or leſs, if there be fraud, it poiſons the whole. The juſtices are the proper judges of fraud; and they have adjudged that it was a fraudulent purchaſe. And it appears upon the face of the caſe, as ſtated for the judge of aſſize, that it was ſo. But that is not all: They are not confined to this ſtate of the facts. For they heard further evidence on both ſides, before they adjudged the purchaſe to be fraudulent. —— By lord *Hardwicke* Ch. J. It muſt be further evidence of the ſame fact: For the ſtate of the caſe made for the judge of aſſize was before agreed between the parties to be the true ſtate of it. This caſe doth not appear to be within the act; for the act is confined to purchaſes under 30l. Now in the preſent caſe, the conſideration was 39l, and was *bona fide* paid to the vendor. And it would be pretty hard to ſay, that the juſtices had a power upon this act to enquire, whether or no the purchaſer borrowed the money. It is a common caſe, to borrow money to make up the price. And as to the fraud, it is true, that the juſtices are the proper judges of fraud. But fraud is a fact which muſt be found. It muſt be ſo by a jury upon a ſpecial verdict. The juſtices are judges of the fact; and they may judge of the fraud ariſing from the fact. If they had generally found the fraud, we might have been bound by ſuch general finding: But when they ſtate the facts particularly, the matter is as much open for our determination upon it, as it was for theirs. And the whole court was of opinion, that from the facts ſtated here is no ſufficient evidence of fraud. And both the orders were quaſhed. *Burrow's Settl. Caſ.* 57.

H. 15 *G.* 2. *Cotleigh* and *Stockland*. *John Spiller*, the pauper, was a mortgagee of a term for 15l; and 30s were due to him for intereſt, and 181 10s more on bond and ſimple contract. The mortgagor died. *Spiller* took out adminiſtration, as principal creditor; entered and was poſſeſſed; and ſo continued, till removed by the original order. By the court: *Spiller* gained a ſettlement, as a purchaſer for a conſideration of more than 30l *bona fide* paid. *Str.* 1162. *Burrow's Set. Caſ.* 169.

E. 14 *G.* 3. *Everſholt* and *Woburn*. The paupers (two ſiſters) reſided at *Everſholt* under a certificate from *Woburn*. A perſon, intitled to a long term of years in a cottage in *Everſholt*, after having deviſed it to *Andrew Powell*, ſon of their father *William Powell*, adds, that "it is alſo my will "and pleaſure, that the ſaid *William Powell* (their father)

"and

" and his wife and children ſhall have free liberty and " power, during their natural life to dwell in it." And accordingly, *William Powell* and his wife, and their ſaid ſon *Andrew*, and the two daughters (the paupers) reſided in it till *William Powell*'s death. By the court clearly: The ſettlement of the daughters (the two paupers) is in *Everſholt*. Bur. Set. Caſ. 851.

H. 6 *G.* 3. *Dunchurch* and *South Kilworth*. *Edward Tanſur*, a certificate man from *Dunchurch*, together with his wife *Elizabeth*, were joint purchaſers of a houſe, yard, and garden at *South Kilworth*, and paid for the purchaſe thereof 191 and upwards. He laid out about 151 more in repairs, and built a new ſhop on part of the premiſſes; and was taxed after the rate of a tenement of 30l value, and reſided in the ſame till his death. After his death, his widow the pauper *Elizabeth* continued in poſſeſſion for 10 months and more; afterwards ſold part of the premiſſes for upwards of 30l, and reſerved part to herſelf; but removing out of the ſame into another houſe in the ſame pariſh, and becoming actually chargeable, ſhe was removed by order of two juſtices to *Dunchurch* which gave the certificate, and the ſeſſions confirmed that order. It was moved to quaſh theſe orders; for that the pauper on this ſtate of the caſe had gained a ſettlement at *South Kilworth*. By the court: The whole queſtion is, Whether this woman was a *bona fide* purchaſer of an eſtate of 30l value? She cannot be preſumed to have come to it by deſcent, or executorſhip, or any ſuch like act of law, becauſe the contrary appears. She and her huſband were joint purchaſers. They took jointly and by entierty, and not by moieties. If ſo, ſhe can only ſtand in the ſame ſituation as her huſband did; which is that of a purchaſer. And as to the value, the act takes it according to the purchaſe money actually paid; and no money afterwards laid out, can make the prior purchaſe of a greater value than it really was at the time of making it. Therefore ſhe gained no ſettlement by this purchaſe. And the orders were confirmed. *Burrow's Settl. Caſ.* 553. *Black. Rep.* 596.

3. *That a perſon may not be removed from his own, altho' not ſettled thereby.* Perſon not removable from his own.

M. 30 *G.* 2. *Aythrop Rooding* and *White Rooding*. *William Gates*, huſband of the pauper *Suſannah Gates*, being ſettled at *White Rooding*, went away and left his wife and children. Whereupon ſhe and her children went and lived for the ſpace of 40 days, without her huſband, in a copyhold tenement of her huſband's at *Aythrop Rooding*. Two juſtices remove her to *White Rooding*, as the place of her

huſband's ſettlement. The ſeſſions, upon appeal, quaſh that order. It was moved to quaſh the order of ſeſſions; and argued, that tho' this was the huſband's own eſtate, yet his wife and children might be removed from it; that he himſelf could not have gained a ſettlement upon the ſaid eſtate without reſidence upon it, for otherwiſe a man who had property in divers pariſhes might have different ſettlements at the ſame time. On the other hand, it was admitted, that neither the wife and children, nor even the huſband himſelf, could have been removed to this place, where the huſband had never reſided; but it was inſiſted, that they were irremovable from it, as they were inhabiting upon their own eſtate. For they did not come to inhabit there as intruders or vagrants, but to reſide upon their own; and no perſons can be removed from their own, be the value ever ſo ſmall, or let them come to it in what manner ſoever. By the court: There doth not appear any diſſent of her huſband from her going there, and therefore it is rather to be preſumed that ſhe went with his conſent. The huſband's ſettlement remains as it was, but nevertheleſs the wife was not removable from his eſtate. It is one thing to ſay, that a perſon may not be removed; and another, that ſuch perſon doth not gain a ſettlement. The huſband himſelf would not have been removable from his own, if he had gone thither. A man's right to reſide upon his own eſtate is founded on *Magna charta*, which ſays, that a man ſhall not be diſſeiſed of his freehold. A wife hath a natural right to go and reſide upon her huſband's eſtate. If ſhe had gone againſt her huſband's conſent, it would have made an alteration. And the court were unanimous, that the juſtices could not remove her from her huſband's property. *Burr. Settl. Caſ.* 412.

E. 4 *G.* 3. *Leeds* and *Blackfordby*. *Joſeph Howe*, huſband of *Anne Howe* the pauper, took a tenement of 10l a year at *Blackfordby*, and reſided there above 40 days. Afterwards he took a tenement at *Leeds* of above 10l a year, and went and reſided there for above 40 days, leaving his wife at *Blackfordby*. Then he returned to *Blackfordby*, and ſtayed with his wife there 27 days. And on his leaving her, and going away to *Leeds*, two juſtices remove her from *Blackfordby* to *Leeds*, as to her place of ſettlement. It was agreed, that her ſettlement muſt follow that of her huſband: But the court were of opinion, that the juſtices had no power to remove her from *Blackfordby*, whilſt her huſband's intereſt there ſubſiſted. The huſband himſelf could not have been removed from his

his own tenement at *Blackfordby*, the leaſe whereof was unexpired. And if they could not have removed the man himſelf from his own, it follows that they could not remove his wife ſo long as it remained his. *Burrow's Settl. Caſ.* 524. *Black Rep.* 466.

4. *How far a certificate perſon ſhall gain a ſettlement by an eſtate of his own, notwithſtanding the above-ſaid ſtatute of the* 9 & 10 W.

Whether a certificate perſon may gain a ſettlement by reſiding on his own eſtate.

E. 5 *G. Burclear* and *Eaſtwoodhay*. *Abraham Hacket* comes with a certificate into the pariſh of *Eaſtwoodhay*, and afterwards marries one *Sarah Smith*. Her father ſurrenders to her a copyhold eſtate of 20 s a year, and ſo the huſband had it in her right. By the court: The man has gained a ſettlement in *Eaſtwoodhay*; for a man cannot be turned out of his own, be it never ſo ſmall. And by *Forteſcue* J. the party here could not be removed: And not removable, and gaining a ſettlement, are the ſame thing. Then it was objected, that the perſon being a certificate perſon, he gains no ſettlement, unleſs he rents a tenement of 10 l a year, or exerciſeth an annual office; and that ſtatute being an explanatory act, is not itſelf to be explained, and conſequently cannot be taken farther than the words. But by the court: This is not an explanatory act, but a new law, and muſt therefore receive a liberal conſtruction. The exceptions in the ſtatute prove this caſe, being a caſe more reaſonable than either that are there mentioned; and the parliament never intended to put a certificate man in a worſe condition than another perſon. *Caſ. of S.* 121. *Str.* 163. *Burrow's Settl. Caſ.* 221.

[Note, where it is ſaid all along throughout this courſe of ſettlements, that a perſon not removable for 40 days thereby gains a ſettlement; this is to be underſtood with reſpect to the particular inſtance only then ſpoken of: For it is by no means univerſally true, that every perſon who reſides 40 days unremovable doth become thereby legally ſettled. A *ſervant* not removable for 40 days, gains no ſettlement unleſs he ſerves out his year: A *baſtard* with its mother for nurture for 40 days, doth not thereby acquire any new ſettlement: So a *wife* reſiding upon the huſband's eſtate: So a *certificate perſon*, or one reſiding on a *purchaſe under the value of* 30 l and not actually chargeable, though they are irremovable, yet by ſuch reſidence they acquire no ſettlement.]

H. 31 *G.* 2. *Cold Aſhton* and *Woodcheſter*. Caſe ſtated for the opinion of the court: In *July* 1725, *Daniel Harriſon* and *Mary* his wife, and *William* their ſon, went with a cer-

a certificate from *Woodcheſter* to *Cold Aſhton*. They all lived in the pariſh of *Cold Aſhton* from *July* 1725, till about *Chriſtmas* 1728, at which time *William Fido* the father of the ſaid *Mary* died inteſtate, leaving the ſaid *Mary* his daughter and five other children, and being at the time of his death poſſeſſed of and intitled to a tenement and two acres and an half of land of the yearly value of 61 17s in *Cold Aſhton*, for the remainder of a term of 89 years, determinable on the death of himſelf and the ſaid *Mary* his daughter. Upon the death of *William Fido*, *Daniel Harriſon* and *Mary* his wife and *William* their ſon, who was then about five years old, entred upon and took poſſeſſion of the ſaid tenement and land, and *Daniel Harriſon* and *Mary* his wife have lived in and occupied the ſame ever ſince, till the removal by the order now appealed againſt. But no adminiſtration of the goods or perſonal effects of *William Fido* was ever granted to the ſaid *Daniel Harriſon* and *Mary* his wife, or either of them, or to any other perſon. *William Harriſon* lived with his parents *Daniel* and *Mary Harriſon*, in the ſaid tenement, till about 1748, when he married the pauper *Mary* (by whom he had the four children removed); and after his marriage, he and his wife *Mary* lived in the pariſh of *Cold Aſhton* ſeparate and apart from the ſaid *Daniel Harriſon*, until the time of the death of the ſaid *William*, which was in the year 1755. *Mary* the widow of *William Harriſon*, and her four children, having after the death of the ſaid *William*, become actually chargeable to the pariſh of *Cold Aſhton*, were removed by order of two juſtices to *Woodcheſter* which had granted the certificate. Upon appeal, the ſeſſions quaſhed the order, and ſtated the above caſe; which being removed by *certiorari*, it was moved that the order of ſeſſions might be quaſhed. There were two queſtions; 1. Whether *Daniel Harriſon* the father acquired any ſettlement different from that to which he was intitled by the certificate? 2. Whether if ſo, the ſon gained a derivative one?——Lord *Manſfield* Ch. J. As to the firſt queſtion, the caſe of a certificate man's gaining a ſettlement by reſiding on his own eſtate, is preciſely the ſame as that of a common perſon not under a certificate, and ariſes by conſtruction; for it is not within the words of the 8 & 9 *W.* which ſpeaks only of ſerving an annual office, and renting 10l a year. But reſiding on a man's own eſtate, was conſidered as a ſtronger caſe than the caſual property acquired by renting, becauſe he has a ſettlement on the ſtatute of the 13 & 14 *C.* 2. not by the words, but on the principle that he cannot be

removed. This conſtruction being made upon the reaſon, gives a greater latitude to the principle on which the conſtruction is founded; and therefore a man who reſides on his own eſtate, though of ever ſo ſmall a value, is irremovable: And this holds equally in the caſe of a certificate perſon, who gains a ſettlement, if after he comes in by certificate, he is under ſuch circumſtances as by his property he cannot be removed. Whether in this caſe *Daniel Harriſon* had ſuch a property in this leaſehold eſtate, when he firſt entred upon it, is a queſtion that need not now be determined. What I ground my opinion upon is, that he has acquired by the length of poſſeſſion ſuch a right as he was not removable from. For the ſtatute of limitations doth not operate by way of barring the remedy only, but it gives a right. He may bring an ejectment after 20 years poſſeſſion; and no perſon could have recovered againſt him, becauſe ſuch perſon was out of poſſeſſion all the time. I except the caſe of landlord and tenant; for there, the poſſeſſion of the tenant is that of the landlord. This poſſeſſion gives a title from which the pariſh officers could not remove him, nor the next of kin. In the caſe cited, *Farringdon* and *Widworthy*, they had been ſatisfied their ſhares; and here, if they have not controverted it for ſuch a length of time, it is to be ſuppoſed they have given up that right. If the caſe had turned on the general queſtion, Whether the next of kin gains a ſettlement without adminiſtration? I ſhould have deſired time to conſider of it, and the caſes cited. There is a material difference between the party's being ſole next of kin, and where in common with others, as in this caſe; for where one is the ſole next of kin, he has the undoubted right to adminiſtration. In general, it is of more conſequence, that the law with regard to the poor's ſettlements ſhould be certain, than what the determination is as to the particular caſe in queſtion. As to the ſecond point, of a derivative ſettlement to the ſon;—the word *emancipation* is a looſe term in our law, eſpecially in the matter of ſettlements, and is uſed in the books without affixing any preciſe idea. Indeed it is a term borrowed from another law, and not properly applicable to ours. The rule I take to be this: Children are intitled to the ſettlement of their father, till they have acquired another. As to the diſtinction made at the bar, that the ſon ſhall not derive a new ſettlement from his father, becauſe it was acquired by the father himſelf after the ſon had left him; this might be material were the fact ſo, but it is not ſtated here to ſay that was the caſe, or that he left his father ſo as to change his derivative ſettlement. It is ſtated,

ſtated, that he lived 20 years with his father in this tenement, or at leaſt very near it, and we cannot intend that he did not.—Mr. juſtice *Deniſon* was of the ſame opinion, (Mr. juſtice *Foſter* being abſent.)—Mr. juſtice *Wilmot*: As to the father; I do not think it material to ſay any thing about the adminiſtration. Had the caſe turned upon that, it would have deſerved conſideration. If it be a matter already ſettled, I ſhall be for adhering to the rule *(Stare deciſis)*, which is a right rule, and more eſpecially in the poor law.—Poſſeſſion by wrong gives a title upon an ejectment againſt the legal owner. Here is a legal title without adminiſtration: After ſuch a length of poſſeſſion, one would be inclined to preſume as much as poſſible. Now here it is poſſible that *Daniel Harriſon* and his wife might have ſome grant or aſſignment from *William Fid* in his lifetime; or ſome other regular and rightful title to the poſſeſſion which they took of this tenement. So that their poſſeſſion might poſſibly have been a rightful one.—It would be too nice to be computing days, to ſee whether the ſon was with his father a day over or under 20 years.—And the order of ſeſſions was affirmed. *Burrow's Settl. Caſ.* 444.

E. 18 *G.* 2. *Stansfield* and *Spotland.* If an eſtate *deſcends* to a certificate perſon, it gains him a ſettlement, becauſe it is by operation of law, and not by an act of his own; and as the ſtatute hath been laid open in caſes of deſcents, it ought to be ſo in caſes of purchaſes. And by *Lee* Ch. J. the ſtatute of the 8 & 9 *W.* hath received a liberal conſtruction; and hath been held to gain a ſettlement, both in deſcents, and deviſes, and purchaſes. On the 13 & 14 *C.* 2. the conſtruction has been, that let the value be what it will, a perſon cannot be removed from his own; and it ſeems to be the ſame upon the certificate act; for if he is not removable within the 13 & 14 *C.* 2. he is not removable on the certificate act. 1 *Seſſ. C.* 316. *Burrow's Settl. Caſ.* 205.

M. 32 *G.* 2. *Shenſton* and *Aldridge.* The wife of *Iſaac Green* a certificate man, had an eſtate *deviſed* to her for life by her father; upon which ſhe and her huſband entred, and lived thereupon for above 6 months. By the court: *Iſaac* hereby gained a ſettlement, notwithſtanding the certificate. *Burrow's Settl. Caſ.* 468.

T. 16 *G.* 2. *Deddington* and *Duns Tew.* A certificate man *purchaſed* a houſe for 42 l, lived in it many years, then ſold it, and becoming chargeable was ſent back. It was inſiſted, that the 9 & 10 *W. c.* 11. ſaying, *a certificate man ſhall gain a ſettlement by no act whatſoever, unleſs the taking*

taking 10*l a year, or ſerving an annual office*, this man, notwithſtanding the purchaſe, might be ſent back: and it was ſaid to differ from the caſe of *Burclear* and *Eaſtwood-bay*, where the ſurrender of a copyhold to the certificate man's wife was held to gain him a ſettlement; becauſe there it was not his own act (as this purchaſe is) but it came to him by operation of the law. But the court did not think this a ſufficient diſtinction, and ſaid a purchaſe was in its nature an excepted caſe; and his ſelling it afterwards made no alteration. *Str.* 1193. *Burrow's Settl. Caſ.* 220.

H. 6 *G. Ivinghoe* and *Stonebridge*. A certificate man made a purchaſe in *Stonebridge*, and his *apprentice* lived with him for above 40 days upon the purchaſed eſtate there: And by the court, The apprentice thereby gained a ſettlement; for when a certificate man maketh a purchaſe, he immediately ceaſeth to be there in nature of a certificate man, and becomes a ſettled inhabitant, and conſequently his apprentice with him. *Str.* 266.

T. 21 *G.* 3. *Hadenham* and *Wivelingham*. *Robert Bittany*, late huſband of the pauper *Mary Bittany*, came with a certificate from *Hadenham* to *Wivelingham*, where one *Elizabeth Bittany* by her will deviſed her eſtate at *Wivelingham* to truſtees to be ſold, and the money ariſing from the ſale thereof to be divided between the ſaid *Robert Bittany* and three daughters of *William Bittany*. They all agreed among themſelves, that *Robert* ſhould have the real eſtate, and the three daughters of *William* the perſonalty amongſt them, whereupon the truſtees conveyed the ſaid real eſtate to *Robert*; who entred, and reſided thereupon ſeveral years. The queſtion was, whether this reſidence of *Robert* was ſuch a reſidence upon his own property as would diſcharge the certificate, and gain a ſettlement. It was admitted, that reſidence on an eſtate in which a man has only an equitable intereſt is ſufficient; but it was inſiſted, that *Robert* had taken no intereſt of any kind in the lands by the will, neither legal nor equitable. He had only a right to call upon the truſtees to ſell the eſtate, and diſtribute the money ariſing from the ſale. On the other hand it was argued, that *Robert* had clearly an equitable title under the will; all the parties had agreed that the truſtees ſhould not ſell; and that it is clearly ſettled, that a reſidence on one's own eſtate, coming either by deſcent or deviſe, whether the legal intereſt is coupled with the equitable or not, and whatever the value is, will gain a ſettlement, and diſcharge a certificate. Lord *Mansfield* mentioned the caſe of *Roper* and *Radclyffe*, to ſhew, that a deviſee of the

ſurplus

ſurplus ariſing from the ſale of lands after payment of debts and legacies, has an equitable intereſt in the lands themſelves, it being in his option to pay the debts and legacies, and keep the land. *Willes* J. ſaid, the ſame queſtion as in this caſe had occurred in the caſe of *Natland*, which was referred to Mr. juſtice *Gould* on the circuit, who decided that a ſettlement was gained; and that his opinion had been afterwards recognized by the court. And in the preſent caſe, the court were unanimous, that *Robert* hereby vacated the certificate, and conſequently gained a ſettlement. *Douglas.* 738.

Reſidence neceſſary.

5. *How far reſidence upon a man's own eſtate is neceſſary to gain him a ſettlement.*

H. 8 *W. Riſelip* and *Harrow.* By *Holt* Ch. J. Having land in a pariſh will not make a ſettlement, but living in a pariſh where one has land, will gain a ſettlement without notice; for the act never meant to baniſh men from the enjoyment of their own lands. 2 *Salk.* 524.

M. 8 *G. Wokey* and *Hinton Blewet.* A perſon ſettled at *Hinton Blewet*, had an eſtate deſcended to him in *Wokey*; whereupon the juſtices ſend him thither as to the place of his laſt ſettlement. But by the court: The order muſt be quaſhed; for it is no ſettlement nor inhabitation, though if he ſhould go thither he could not be removed: it may be a great injury to ſend him away from a good trade at *Hinton Blewet*, to perhaps half an acre of land, wherein he has but a term. *Str.* 476.

M. 25 *G.* 2. *Weſt Shefford* and *Baydon. John Bird* came into *Weſt Shefford* with a certificate from *Baydon.* During his ſtay at *Weſt Shefford*, he became beneficially intitled to a leaſehold eſtate of 14 l a year there, determinable upon his own life. Upon which he entred on *Nov.* 17th, and continued in poſſeſſion till the 15th of *December* following, being 28 days only, when he died. By the court: In all caſes, whether of ownerſhip of land, or renting 10 l a year, a reſidence of 40 days is neceſſary. And the caſe of *Murſley* and *Grandborough* was cited as a caſe in point; in which it was holden by the court, that any perſon who has an eſtate of his own, either freehold, copyhold, or a beneficial term for years, by act of law (as by deſcent, marriage, executorſhip, or adminiſtration) may dwell upon it as his own, and he is not removable; and gains a ſettlement, if he continue 40 days, tho' under 10 l a year. But he muſt abide 40 days. And neither he nor his can be removed to it from any other place, unleſs he ſhall have reſided 40 days. *Burrow's Settl. Caſ.* 307.

E. 8 *G.*

E. 8. *G.* 2. *K.* and *St. Mary Berkhamſtead.* The huſband ran away, and it was not known whether he was alive or dead; in the mean time the wife had a houſe deviſed to her in *Northchurch*, and ſhe and her children went to live there. The queſtion was, Whether by continuing therein 40 days, they gained a ſettlement? The court ſeemed to be of opinion, ſince it was not known that the huſband was dead, he muſt be ſuppoſed to be alive, and in that caſe that the wife could not gain a ſettlement for herſelf, but muſt follow the huſband's ſettlement; and that the huſband having not reſided 40 days at *Northchurch*, in the ſaid houſe unremovable, he hath gained no ſettlement there. 2 *Seſſ. C.* 182.

But reſidence upon the *ſame eſtate* is not neceſſary, provided the reſidence be within the pariſh. As in the caſe of *Sowton* and *Sydbury*, *E.* 12 *G.* 2. A perſon who lived with his family at *Sowton*, having an eſtate at *Sydbury*, which the tenant gave up, went thither and lodged in an alehouſe as a gueſt, without having any certain room there, and ſtaid from *November* till *April*, but ſometimes went to *Sowton*, where his children and family were, and to other places as his occaſions required, poſſeſſed and managed his eſtate, by repairing fences, hoeing turnips, and the like. The queſtion was, Whether ſuch inhabiting, and not upon the eſtate, would gain a ſettlement? And the court were of opinion it would, and that it made no difference whether it were in his own houſe or in an alehouſe; for being in the ſame pariſh, he could not be removed. *Seſſ. C. V.* 2. 150. 19 *Viner.* 374. *Burrow's Settl. Caſ.* 125.

Alſo it is not neceſſary that ſuch reſidence ſhould be *for* 40 *days together*. Thus in the ſame caſe of *Sowton* and *Sydbury*, the queſtion was moved, Whether, ſince he did not reſide there for 40 days together, but for more than 40 days in the whole, ſuch reſidence ſhould gain a ſettlement? And by the whole court: It is not neceſſary upon the ſtatute, that the reſidence ſhould be 40 days ſucceſſively. 2 *Seſſ. C.* 150. *Andr.* 345. 19 *Vin.* 374. *Bur. Settl. Caſ.* 125.

And, *T.* 13 *G.* 2. *St. Nyott's* and *St. Cleere. Nicholas Penquite* the pauper was born at *St. Cleere*; afterwards he gained a ſettlement at *St. Nyott's*; and from thence returned to *St. Cleere*, and lived there with his mother, on a tenement, in part of which he had an eſtate of freehold and inheritance, and of which he was ſeiſed in common together with his mother and ſiſters. He worked there as a day labourer, and lodged ſometimes on his own eſtate

and

and ſometimes in other places where he worked in the ſaid pariſh of *St. Cleere*, and at other times in other pariſhes adjoining; but did not live and reſide on his ſaid eſtate in *St. Cleere*, or in the pariſh of *St. Cleere*, by the ſpace of 40 days together at any one time, between his leaving *St. Nyott*'s and ſelling his eſtate in *St. Cleere* (which was about 3 years after his returning to *St. Cleere*). By the court: This depends on the ſtatute of the 13 & 14 *C.* 2. which directs the ſending a pauper to the place where he was laſt legally ſettled for the ſpace of 40 days. But this man continued, off and on, for more than 40 days. And it is not neceſſary that he ſhould have reſided there 40 days together. He was irremovable from *St. Cleere* for above 40 days; and that is ſufficient. *Burrow's Settl. Caſ.* 132.

Concluſion. AND now upon the whole, having gone through this ſubject of ſettlements, and I hope with ſome perſpicuity and exactneſs; the firſt reflection which will ariſe in the mind of every reader, I think, will be, to admire the ſubtilty of human wit. It was the obſervation of a wiſe king of *Iſrael* long ago, that God made man upright, but they have ſought out many inventions. A ſtranger to our laws would not readily conjecture, how many doubts and knotty difficulties have been formed upon the conſtruction of one ſhort act of parliament, and one ſingle clauſe of that one ſhort act, and which upon the face of it doth not appear to carry any conſiderable difficulty.

The next thing that occurs, is to reverence the wiſdom of the court of king's bench; in clearing up thoſe difficulties, and eſtabliſhing the ſenſe of the law upon ſolid and firm grounds: Whoſe determinations, although they are not a law in themſelves, yet they are the beſt and ſureſt expoſition of the law; being made by perſons of diſtinguiſhed abilities, educated and exerciſed in the profeſſion of the law, after argument by able counſel. Which advantages are not ordinarily to be expected at a quarter ſeſſions. So that the law ſeems now to be well ſettled as to theſe matters; and conſequently the diſputes about ſettlements cannot ſo much ariſe from the uncertainty of the law, as from the uncertainty of the facts upon that law: and this, from the nature of the thing, muſt always be uncertain, as depending upon the teſtimony of witneſſes, and thoſe alſo for the moſt part of the meaneſt of the people.

There hath been alſo another cauſe of much altercation, upon appeals againſt orders of removal, which ariſes from ſome

ſome defect in thoſe orders themſelves; or from ſome error in the method of proceeding in relation thereto: which comes next to be conſidered.

III. Of removals.

i. Order of removal in general.
ii. Order of removal of a certificate perſon.
iii. Appeal againſt the order of removal.

i. Order of removal in general.

The ſtatute of the 13 & 14 *C.* 2. *c.* 12. which hath been ſo often canvaſſed in treating concerning ſettlements, is not yet to be diſmiſſed by us, but will appear again under this head, in a new and quite different light; as being that upon which all the orders of removal are or ought to be eſtabliſhed. And in this view, there have been as many caſes adjudged upon it, as in the other, although not altogether in ſo great a variety.

In treating of this ſubject, we will firſt ſet forth the ſtatutes: Then the eſtabliſhed form of an order of removal thereupon: And then take the ſame in pieces orderly and diſtinctly, thereby to diſcover the ſeveral ſhelves and rocks upon which numberleſs orders have been ſhipwrecked.

It is true, the ſtatute of the 5 *G.* 2. whereby errors in point of form may be amended at the ſeſſions, hath in ſome ſort remedied theſe defects; but that it may appear how ſuch errors are to be amended, and as it will be better if the order be ſuch as ſhall need no amendment, and as it ſtill remains a doubt upon that ſtatute, what ſhall be deemed matter of form, and what ſhall be deemed of the ſubſtance of the order, this method is not the leſs to be purſued upon that account.

By the 13 & 14 *C.* 2. *c.* 12. it is enacted as follows: *Whereas by reaſon of ſome defects in the law, poor people are not reſtrained from going from one pariſh to another, and therefore endeavour to ſettle themſelves in thoſe pariſhes where there is the beſt ſtock, the largeſt commons or waſtes to build cottages, and the moſt wood for them to burn or deſtroy, and when they have conſumed it, then to another pariſh, and at laſt become rogues and vagabonds, it is enacted, That it ſhall be lawful, upon complaint made by the churchwardens or overſeers of the poor of any pariſh, to any juſtice of the peace, within* 40 *days after*

after any such person coming so to settle in any tenement under the yearly value of 10 l, *for any two justices of the peace (one whereof is of the* quorum) *of the division where any person that is likely to become chargeable to the parish shall come to inhabit, by their warrant to remove and convey such person to such parish where he was last legally settled, unless he give sufficient security for the discharge of the said parish, to be allowed by the said justices.* s. 1.

And if such person shall refuse to go, or shall not remain in such parish where he ought to be settled, but shall return of his own accord to the parish from whence he was removed, one justice may send him to the house of correction, there to be punished as a vagabond. s. 3. And by the 17 G. 2. c. 5. *All persons who shall unlawfully return to such parish or place from whence they have been legally removed by order of two justices, without bringing a certificate from the parish or place whereunto they belong, shall be deemed idle and disorderly persons; and any one justice may commit them (being thereof convicted before him, by his own view, or by their own confession, or by the oath of one credible witness) to the house of correction, there to be kept to hard labour for any time not exceeding one month.* s. 1.

And if the churchwardens and overseers of the parish to which he shall be removed, refuse to receive such person, and to provide work for him, as other inhabitants of the parish; any justice of that division shall bind any such officer in whom there shall be default to the assizes or sessions, there to be indicted for his contempt in that behalf. 13 & 14 C. 2. c. 12. s. 3.

And by the 3 *W.* c. 11. *If any person be removed by virtue of this act, from one county, riding, city, town corporate, or liberty to another, by warrant of two justices; the churchwardens or overseers of the poor of the parish or town to which the said person shall be so removed, are required to receive the said person: and if he or they shall refuse so to do, such person so offending shall (on proof thereof by the oath of two witnesses before one justice of the place to which the person shall be removed) forfeit for each offence* 5 l, *to the use of the poor of the parish or town from which such person was removed, to be levied by distress, by warrant to the constable of the parish or town where such offender dwells; and for want of sufficient distress, the said justice shall commit the offender to the common gaol for* 40 *days.* s. 10.

Upon complaint made by the churchwardens or overseers of the poor of any parish to any justice of the peace] By these words one justice alone hath cognizance of the matter, so

ſo far as concerneth the complaint only: and by virtue thereof may iſſue his warrant to bring the party before him in order to his examination; or he may iſſue his warrant, to bring the party before himſelf and another juſtice, in order to hearing and determining the complaint; for he himſelf alone cannot hear and determine, but only bring the matter into the courſe of being heard and determined by two juſtices: and therefore it is moſt uſual for the two juſtices originally to iſſue their joint precept to bring the party before them for that purpoſe. Nevertheleſs, if the party is willing, he may go voluntarily before the juſtices, at the requeſt of the overſeers, without any warrant at all.

The form of which warrants or precepts aforeſaid, where they are requiſite, may be to this effect:

Warrant of one juſtice for a perſon to be examined concerning his ſettlement.

Weſtmorland. { To the conſtable of ———

FORASMUCH *as complaint hath been made before me* ——— *one of his majeſty's juſtices of the peace in and for the ſaid county, by the churchwardens and overſeers of the poor of the pariſh of* ——— *in the county aforeſaid, that* A. P. *hath come to inhabit in the ſaid pariſh, not having gained any legal ſettlement therein, nor produced any certificate owning him to be ſettled elſewhere, and that the ſaid* A. P. *is likely to become chargeable to the ſaid pariſh of* ——— *Theſe are therefore to require you to bring the ſaid* A. P. *before me, to be examined concerning the place of his laſt legal ſettlement. Herein fail you not. Given under my hand and ſeal the* ——— *day of* ———.

Warrant of two juſtices in order to the adjudication.

Weſtmorland. { To ———

FORASMUCH *as complaint hath been made before us* ——— *two of his majeſty's juſtices of the peace in and for the ſaid county, and one of us of the* quorum, *by the churchwardens and overſeers of the poor of the pariſh of* ——— *in the ſaid county, that* A. P. *hath come to inhabit in the ſaid pariſh, not having gained any legal ſettlement therein, nor pro-*

duced any certificate owning him to be ſettled elſewhere, and that he the ſaid A. P. *is likely to become chargeable to the ſaid pariſh of* ——. *Theſe are therefore to require you to bring the ſaid* A. P. *before us, at the houſe of* —— *in* —— *in the ſaid county, on* —— *the* —— *day of* —— *at the hour of* —— *in the afternoon of the ſame day, to be examined concerning the place of his laſt legal ſettlement, and to be further dealt withal according to law. Given under our hands and ſeals the* —— *day of* ——.

It may alſo not be unfitting, eſpecially in caſes of doubt or difficulty, to give notice (if it may be) to the overſeers of the pariſh or place where the ſettlement is ſuppoſed to be, that they may attend, if they think proper, when the adjudication is made; which probably might prevent appeals oftentimes from ſuch adjudications and orders. Which notice may be to the effect following:

Summons to ſhew cauſe againſt an order for removal.

Weſtmorland. TO *the churchwardens and overſeers of the poor of the pariſh of* —— *in the county of* ——, *and to every of them.*

This is to ſummon you, or ſome of you, to appear (if you ſhall ſo think proper) before ——, *and ſuch other his majeſty's juſtices of the peace for the ſaid county of* W. *as ſhall be at the houſe of* —— *in* —— *in the ſaid county of* W. *on* —— *the* —— *day of* —— *at the hour of* —— *in the afternoon of the ſame day, to ſhew cauſe why* A. P. *ſhould not be removed from the pariſh of* —— *in the ſaid county of* W. *to your ſaid pariſh of* ——. *Given under* —— *hand and ſeal, this* —— *day of* —— *in the year of our Lord* ——.

And then the general form of an order of removal, as grounded upon the ſtatute of the 13 & 14 *C.* 2. above recited, may be thus:

The form of a general order of removal.

Weſtmorland. TO *the churchwardens and overſeers of the poor of the pariſh of* Orton *in the ſaid county of* Weſtmorland, *and to the churchwardens and overſeers of the poor of the pariſh of* Penrith *in the county of* Cumberland, *and to each and every of them.*

Upon the complaint of the churchwardens and overſeers of the poor of the pariſh of Orton *aforeſaid in the ſaid county of* Weſtmorland, *unto us whoſe names are hereunto ſet and ſeals affixed, being two of his majeſty's juſtices of the peace in and for the ſaid county of* Weſtmorland, *and one of us of the* quorum, *that* John Thomſon, Mary *his wife*, Thomas *their ſon aged eight years, and* Agnes *their daughter aged four years, have come to inhabit in the ſaid pariſh of* Orton, *not having gained a legal ſettlement there, nor produced any certificate owning them or any of them to be ſettled elſewhere, and that the ſaid* John Thomſon, Mary *his wife, and* Thomas *and* Agnes *their children, are likely to be chargeable to the ſaid pariſh of* Orton: *We the ſaid juſtices, upon due proof made thereof, as well upon the examination of the ſaid* John Thomſon *upon oath, as otherwiſe, and likewiſe upon due conſideration had of the premiſes, do adjudge the ſame to be true; and we do likewiſe adjudge, that the lawful ſettlement of them the ſaid* John Thomſon, Mary *his wife, and* Thomas *and* Agnes *their children, is in the ſaid pariſh of* Penrith *in the ſaid county of* Cumberland: *We do therefore require you the ſaid churchwardens and overſeers of the poor of the ſaid pariſh of* Orton, *or ſome or one of you, to convey the ſaid* John Thomſon, Mary *his wife, and* Thomas *and* Agnes *their children, from and out of the ſaid pariſh of* Orton, *to the ſaid pariſh of* Penrith, *and them to deliver to the churchwardens and overſeers of the poor there, or to ſome or one of them, together with this our order, or a true copy thereof, at the ſame time ſhewing to them the original; And we do alſo hereby require you the ſaid churchwardens and overſeers of the poor of the ſaid pariſh of* Penrith, *to receive and provide for them as inhabitants of your pariſh. Given under our hands and ſeals the —— day of —— in the —— year of the reign of his ſaid majeſty king* George *the third.*

Weſtmorland] *T.* 2 *G.* 2. *K.* and the pariſh of *St. Stephenſon.* There was an order of removal by the juſtices of the town of *Bedford*, from the pariſh of *St. Peter*'s in *Bedford*, to the pariſh of *St. Stephenſon* in the county of *Bedford*, and it was only ſaid in the margin the town of *Bedford*, without mentioning in what county. It was moved to quaſh this order; and inſiſted, that it was neceſſary to mention what county this *Bedford* lay in, becauſe the appeal muſt be to the juſtices of that county where it lies. And of this opinion was the court; but did not quaſh the order, by reaſon of a flaw in the *certiorari* by which it was removed. 1 *Barnardiſt.* 177. 196.

To the churchwardens and overſeers of the poor of the pariſh of Orton] If a place is extraparochial, and hath no over-

ſeers, the juſtices cannot remove from thence, becauſe there are none neither to complain nor to convey; but the juſtices ought firſt to appoint overſeers, and then to remove. 2 *Salk.* 487. *Foley.* 97, 98.

Of the pariſh of Orton *in the ſaid county of* Weſtmorland] The county in the margin is not ſufficient, but it muſt appear in the body of the order that the place is in ſuch county, either expreſsly, or by ſome words of reference, as *in the ſaid county*, or *in the county aforeſaid.* Caſ. of S. 151. 2 Seſſ. C. 181.

In the caſe of *Holbeck* and *Gilderſon*, *M.* 16 *G.* 2. *The borough of Leeds* was in the margin, and the direction was, To the churchwardens and overſeers of the poor of the townſhip of *Holbeck* in the *ſaid borough.* And by the court, That is well enough. And the diſtinction is, betwixt orders and indictments. In orders, the margin is to be conſidered as part of the order, and a clear plain reference to the county in the margin is ſufficient: But in indictments, the county muſt be expreſſed in the body, and a reference to the county in the margin is not ſufficient. *Burrow's Settl. Caſ.* 198.

And to the churchwardens and overſeers of the poor of the pariſh of Penrith *in the county of* Cumberland] As the juſtices cannot ſend from an extraparochial place, unleſs they have overſeers, ſo neither can they ſend to an extraparochial place, which hath no overſeers, becauſe there are none to receive them. 2 *Salk.* 487. *Foley.* 97, 98.

E. 1 *An. St. George*'s and *St. Olave*'s. The order was to convey one *Thomas Gill* to the pariſh of *St. Olave*, and it was directed, To the churchwardens and overſeers of the poor of the pariſh of *St. Olave.* Quaſhed: for they ought and can only order the pariſh officers where the intruſion is made, to make the removal. 2 *Salk.* 493.

Of the pariſh of Penrith] *E.* 11 *An. Spittlefields* and *Bromley.* A perſon was ſent to the pariſh of *Stepney*, who did not appeal. On removal of the order into the court of king's bench, exception was taken, that the removal ought to have been to the townſhip of *Spittlefields*; for *Stepney* is divided into four townſhips, and the poor have been removed from one townſhip to another in the ſame pariſh, and the ſtatute takes notice of townſhips as well as pariſhes, and *Spittlefields* is a hamlet of *Stepney.* By the court: If a perſon is removed to a wrong place, that place ought to appeal, and ſo *Stepney* ought to have done if it were a wrong place, or elſe the order will be concluſive upon

upon them; but this is a matter here out of the record. Juſtices of the peace are not obliged to take notice of the diviſion of pariſhes into townſhips and villages, which maintain their own poor ſeverally and diſtinctly; and *Stepney* here upon an appeal might have ſhewn that the perſon did belong to the townſhip of *Spittlefields*, which might have been a reaſonable cauſe to diſcharge the order. Two townſhips within a pariſh are the ſame as two pariſhes; yet churchwardens are overſeers of the poor of the whole pariſh (though ſo divided) and have a ſuperintendency over the whole villages and townſhips. 18 *Viner*. 468.

Upon the complaint] *H.* 12 *G.* 2. *K.* and *Hareby*. It was moved to quaſh an order of removal, becauſe it did not ſet forth any complaint made: And by the court, the objection is fatal, for the complaint is the foundation of the juſtices juriſdiction. *Andr*. 361.

Upon the complaint of the churchwardens and overſeers of the poor] *E.* 1 *An. Weſton Rivers* and *St. Peter*'s. Exception to an order of removal, in that it was ſaid to be upon complaint only, and not of the churchwardens or overſeers. By the court: This exception is fatal; for no one can diſturb a man coming into a pariſh, but they that have authority to do it: A complaint from one not concerned is nothing; it may be the pariſh is willing to keep him. 2 *Salk*. 492.

Upon the complaint of the churchwardens and overſeers of the poor of the pariſh of Orton *aforeſaid*] *M.* 9 *An. Spalding* and *St. John Baptiſt*. The order was, to the churchwardens and overſeers of the poor of the pariſh of *Spalding*, and to the churchwardens and overſeers of the poor of the pariſh of *St. John Baptiſt*: Whereas complaint hath been made by you ——. It was moved to quaſh the ſame for the uncertainty, becauſe it did not ſay, by which: but by *Parker* Ch. J. Sure that is well enough, for it is upon complaint of the right, if both complain. *Foley*. 267.

Unto us whoſe names are hereunto ſet and ſeals affixed, being two of his majeſty's juſtices of the peace] An order was quaſhed, becauſe it did not appear that it was made by two juſtices: it was only, Whereas complaint hath been made unto us; without reciting their authority as juſtices. 5 *Mod*. 322.

Two of his majeſty's juſtices of the peace] *M.* 4 *G.* *K.* and *Weſtwoodhay*. On complaint to one juſtice, two juſtices adjudge and remove; and it was held to be well: Other-

wiſe, where one juſtice ſets his hand to the order in the abſence of the other. *Caſes of S.* 107. *Str.* 73.

T. 11 *G.* 2. *K.* and *Wykes.* It was held, that though the complaint may be to one juſtice, yet the examination ought to be by two, and thoſe the ſame who ſign the order of removal. *Str.* 1092.

And, moſt undoubtedly, the juſtices ought to be both together at the hearing and determining; tho' the practice in many places is otherwiſe.

Juſtices of the peace in and for the ſaid county] *M.* 12 *An. Q.* and *Uplin.* The order was quaſhed, becauſe it did not ſay that they were juſtices of the peace, but only juſtices of the county. *Caſes of S.* 27.

In and for the ſaid county] *M.* 13 *G. K.* and *Owlton.* Exception was taken to an order for ſaying——unto us two of his majeſty's juſtices of the peace *in* the county aforeſaid; for that by this it appears only that they lived in the county, and not that they were juſtices *for* that county: And the court held this to be a fatal exception, and quaſhed the order for that cauſe. 2 *Seſſ. C.* 76. 2 *Salk.* 474.

The ſaid county] *M.* 8 *W.* It was objected to an order, that it did not appear thereby that the juſtices were of the *diviſion*, which is required by the ſtatute: But this objection was over-ruled, for that the ſtatute therein is only directory. 2 *Salk.* 473.

The ſaid county of Weſtmorland] Where two counties are mentioned before, the *county aforeſaid* is bad for the uncertainty. As in the caſe of *Stepney* and *Cheſham*, *E.* 8 *G.* 2. The order was directed to the churchwardens and overſeers of the poor of two pariſhes in two different counties, and the juſtices call themſelves juſtices of the peace for the *county aforeſaid.* And the order was quaſhed; becauſe it did not appear for which county they were juſtices. And the court can intend nothing. For thoſe who act under a juriſdiction given by act of parliament, muſt ſhew their juriſdiction. *Burrow's Settl. Caſ.* 23.

And one of us of the quorum] Abundance of orders formerly have been quaſhed, for not ſetting forth, that one of the juſtices was of the *quorum*; but now by the 26 *G.* 2. *c.* 27. no order ſhall be ſet aſide for that defect only.

But if in fact neither of the juſtices ſhall be of the *quorum*, it ſeemeth nevertheleſs (except in the caſe hereafter mentioned,

mentioned, 7 *G.* 3. *c.* 21.) that ſuch order ſhall not be good; for although the ſtatute doth not require that the order ſhall ſet forth one of the juſtices to be of the *quorum*, yet it doth require that one of them ſhall actually be ſo. And there are many towns corporate whoſe charters have no *quorum*, but only conſtitute certain of the chief officers juſtices to keep the peace, without giving them power to hear and determine felonies, treſpaſſes, and other miſdemeanors. That is to ſay, they have the power which the juſtices of the county at large have by the firſt aſſignment in the commiſſion of the peace, which is the ſame that the conſervators of the peace had by the common law, and is all that the juſtices of the peace had at firſt by their commiſſion. The power of hearing and determining, which they have now by the ſecond aſſignment in the commiſſion, and which only implies a *quorum*, is a ſeparate and diſtinct authority, and was ſuperadded to the former ſome years after the inſtitution of the office of juſtices of the peace; and this power the juſtices in divers towns corporate have not, and conſequently can have no *quorum*.

E. 6 *G. Albright* and *Skipton*. Upon an appeal from an order of removal made by two juſtices (one of the *quorum*); the ſeſſions, reciting that they had peruſed the charter of *Albright*, and it not appearing thereby that the two juſtices were either of them of the *quorum*, therefore they quaſhed the order of removal. But by the court: The order of ſeſſions muſt be quaſhed; not for want of any power in the ſeſſions to look into the juriſdiction of the two juſtices, for that they certainly have; but becauſe that want of juriſdiction is not ſufficiently alledged; ſince they might have a juriſdiction though it need not appear upon the charter of *Albright*. The ſeſſions ſhould have ſaid in general, that it appeared to them, that the two juſtices were neither of them of the *quorum*, and that would have been good cauſe to quaſh the order of the two juſtices. *Str.* 300.

But now by the 7 *G.* 3. *c.* 21. This is in part remedied: For if in any city, borough, town corporate, franchiſe, or liberty, they have *one* (and no more than one) juſtice actually of the *quorum*; all acts, orders, adjudications, warrants, indentures of apprenticeſhip, or other inſtruments, done or executed by two or more juſtices qualified to act within ſuch city or other place, ſhall be valid, although neither of the ſaid juſtices ſhall be of the *quorum*.

That John Thomſon] *M.* 11 *An. Southwell* and *Needwell*. Whereas a certain woman hath intruded, Theſe are therefore

therefore to require you to convey: Objection, It is not ſaid who this woman was. And by *Parker* Ch. J. You muſt either name her, or ſay a certain woman unknown. *Caſ. of S.* 57.

T. 10 *An.* Caſe of *Newington*. Whereas ſuch a perſon hath intruded into the pariſh, and is likely to become chargeable; Theſe are therefore to require you to remove him *with three children*. Quaſhed as to the children, for they have removed more than is complained of. *Caſ. of S.* 45.

Mary *his wife*, Thomas *their ſon*] *H.* 10 *W. Johnſon*'s caſe. Order to remove a man and *his family*, not good; becauſe too general; for ſome of the family might not be removable. 2 *Salk.* 485.

M. 5 *G. Beaton* and *Siſton*. Order for removal of *Thomas Block* and his family: Upon the firſt reading quaſhed as to the family, becauſe too general. *Str.* 114.

T. 9 *W. Flixton* and *Royſton*. Order to remove *Jane Smith* and her five children: Quaſhed as to the children, for the uncertainty; becauſe it neither tells the names nor ages of the children: for ſhe might have more children than five, and ſome of thoſe five might have gained ſettlements. 1 *Seſſ. C.* 11. *Foley.* 278.

T. 8 *G. Hobey* and *Kingſbury*. Two juſtices adjudging the ſettlement of the huſband to be at *Kingſbury*, and that he is likely to become chargeable to *Hobey*, ſend him, his wife, and ſon of one year old to *Kingſbury*; And whether this was good as to the wife and child, was the queſtion: And it was held to be well enough; and the order was confirmed. *Str.* 527.

Thomas *their ſon aged* 8 *years, and* Agnes *their daughter aged* 4 *years*] *M.* 9 *An. Q.* and *Middleham*. Order to remove a child, of the age of ten years, to *Middleham*, becauſe *Middleham* was the place where his father was laſt legally ſettled. Quaſhed by the court: for that there was no adjudication that *Middleham* was the place of the child's laſt legal ſettlement, and at that age it might have gained a ſettlement. *Foley.* 271.

T. 10 *An. Ringmore* and *Petworth*. The order was, Whereas ſuch a perſon and his 3 children are likely to become chargeable, and their laſt legal ſettlement, was at *Ringmore*. It was moved to quaſh the ſame, becauſe the children's ages were not ſet forth. But by the court, It is not neceſſary in this caſe; for the order ſays, they were laſt

laſt legally ſettled in *Ringmore*, and then no matter what their ages are. *Caſ. of S.* 41.

H. 11 *G. K.* and *Trinity*. This rule was laid down; Every order that concerns the removal of a father and his children, ought to ſhew the ages of the children, for they may have gained a ſettlement in ſome other right, as by being apprentices or ſervants; therefore their age ought to be ſet forth, that it may appear to the court, that by reaſon of their infancy they have not gained any ſettlement in their own right, but have only a relative ſettlement from their father. Seven years is an age that the court will preſume a child could gain a ſettlement at, in his own right; but if it appears upon the order that the child was above 7 years old, the order muſt ſet forth, that ſuch child hath not gained a ſettlement in his own right. 2 *Seſſ. C.* 74.

So in the caſe of *Bowling* and *Bradford*, *H.* 15 *G.* 2. The order removed the father and children (without ſetting forth their ages) from *Bradford* to *Bowling*, and adjudged *Bowling* to be the place of the father's laſt legal ſettlement. By the court: The eſtabliſhed rule is, that where the children are ſent in conſequence of their father's ſettlement, either the ages of the children muſt be ſet out (to ſhew that they are of ſuch tender years as not to have gained a ſettlement for themſelves); or there muſt be an expreſs adjudication of their having gained no other ſettlement. *Burrow's Settl. Caſ.* 177.

Have come to inhabit] *E.* 12 *An. Q.* and *Graffham*. The order ſets forth, that *Henry Tate* and his wife do *endeavour* to intrude into the pariſh. And quaſhed by the court; for that he cannot be removed out of the pariſh, unleſs he hath come into it. *Caſ. of S.* 16.

Not having gained a legal ſettlement there] *E.* 1 *An. Wotton Rivers* and *St. Peter's*. Exception to an order of removal, that it was not ſaid, that the pauper did not rent a tenement of 10*l* a year, according to the words of the act. But as to this the order was held good. 2 *Salk.* 493. 3 *Salk.* 254.

Nor produced any certificate owning them or any of them to be ſettled elſewhere] For by the 8 & 9 *W. c.* 30. If they have a certificate, they cannot be removed for being likely to be chargeable, nor until they do actually become chargeable. But if the order ſet forth that they are actually become chargeable, then this clauſe therein, concerning the certificate, is ſuperfluous.

Likely

Likely to become chargeable] *Scrivenham* and *St. Nicholas*. Order, not ſaying that the party was likely to become chargeable: Quaſhed. 3 *Salk.* 255.

H. 4 *G. Teelby* and *Willerton*. Order, Whereas complaint hath been made, that *Anne Stamp may* become chargeable.—We adjudge the ſame to be true. Quaſhed; for that the act enables the juſtices only to remove perſons likely to become chargeable, and not perſons that poſſibly may be chargeable, for no one can ſay who may not be chargeable; and there is as much difference in this caſe between *may* and *likely*, as between a poſſibility and a probability. 1 *Seſſ. C.* 117. *Str.* 77.

T. 10 *An.* Order, Whereas ſuch a perſon will become chargeable, if permitted to abide. Objected, that is uncertain; it may be ten years hence: Quaſhed. *Caſes of S.* 39.

Note; It doth not appear from any adjudged caſe, that upon appeal it was ever controverted, whether the perſon was or was not likely to become chargeable. And in the caſe of *South Sydenham* and *Lamerton*, *T.* 3 *G.* Mr. J. *Eyre* ſaid, that by the words of the act, living on a tenement under 10 l a year, and likely to become chargeable, are convertible terms. 1 *Seſſ. C.* 115.

Nevertheleſs, complaint muſt firſt be made, that the party is likely to become chargeable, before the juſtices can remove. And, in the caſe of *K.* and *Wykes*, *T.* 11 *G.* 2. an information was granted againſt a juſtice, for taking the examination of a perſon in order for his removal, upon the officers complaining, that he endeavoured to gain a ſettlement in the pariſh contrary to law; without complaining at the ſame time, that he was likely to become chargeable. *Andr.* 238.

It may be proper to take notice in this place, of the act of the 3 *G.* 3. *c.* 8. concerning officers, ſoldiers, and ſailors, who ſerved in the late wars; which makes a proviſion, with reſpect to ſuch perſons, that had not been made by any former act. Before this act, they might have ſet up trades in any city, town corporate, or other place, without being moleſted by reaſon of their exerciſing ſuch trade; but for other reaſons they might have been removed; as if they did not bring a certificate, and were likely to become chargeable. But now by this act, ſuch officers, mariners, ſoldiers, and marines, who have ſerved ſince *Nov.* 22, 1748, and not deſerted, and alſo their wives and children, may ſet up ſuch trades as aforeſaid, without any moleſtation by reaſon of the uſing of ſuch trade; nor ſhall they, or their wives, or children, during

during the time they ſhall exerciſe ſuch trades, be removeable to their place of ſettlement, until they ſhall become actually chargeable. Two juſtices, in the mean time, may ſummon and examine them, concerning their place of ſettlement; and ſhall give them an atteſted copy of their affidavit, which ſhall be admitted as evidence in any general or quarter ſeſſions.—So that ſuch perſons now, in like manner as certificate perſons, ſhall not be removed until they ſhall actually become chargeable. So that their having ſerved has the effect, in that reſpect, of a certificate; and in many caſes is preferable to a certificate, ſince thereby they are in a better capacity of obtaining ſettlements for themſelves, their children, ſervants, and apprentices.—— And therefore the adjudication, as to ſuch perſons, muſt be that they are chargeable, and not that they are *likely to become chargeable*; for until they are chargeable, they cannot be removed.

So alſo, by the 7 *G.* 3. *c.* 40. the gate-keeper at any turnpike gate ſhall not be removable from the toll-houſe, until he ſhall be actually chargeable. *ſ.* 46.

To the ſaid pariſh of Orton] *T.* 10 *An. Q.* and *Bradford.*—Likely to become chargeable, but not ſaid to what pariſh: Quaſhed. *Caſes of S.* 40.

But in the caſe of *Barholm* and *Witham ſuper montem*; *H.* 5 *G.* By the court: *It appearing to us that he is likely to become chargeable*, is ſufficient, without ſaying *to the pariſh from* whence removed; for it is not to give a juriſdiction, but only the reaſon of the judgment. *Str.* 142.

And, *M.* 7 *G. Maidſtone* and *Dething.* It was held well enough in an order of removal, to ſhew a complaint that the party is come into the pariſh of *Dething*, and is likely to become chargeable, without ſaying farther, *to the ſaid pariſh of* Dething. *Str.* 393.

And, *E.* 12 *G. K.* and *Leofield.* An order of removal, whereby a perſon was adjudged likely to become chargeable, without ſaying, *to the pariſh from whence removed*, was confirmed. *Str.* 698.

Theſe indeed are but ſcraps of caſes, minuted down by gentlemen for their own private uſe, and therefore perhaps not certainly to be relied on. And in the caſe of *St. Nicholas Glouceſter* and *St. Peter's Briſtol*, *H.* 11 *G.* Upon an order of removal of *Mary White*, the reciting part of it was, Whereas the pauper was likely to become chargeable to the pariſh of *St. Nicholas*; but in the adjudicating

dicating part it was only ſaid, that ſhe was likely to become chargeable, without ſaying to the pariſh of *St. Nicholas*. The court allowed this to be a good exception, and ſaid they would not take theſe orders to be good by intendment; for the court will not intend a juriſdiction in the juſtices, where they do not intitle themſelves to it upon the face of the order. 2 *Seſſ. C.* 73.

And in the caſe of *Bourne* and *Spalding*, *E.* 8 *G.* 2. The complaint was, that the pauper was likely to become chargeable to the pariſh of *Spalding*; and the adjudication was, that the pauper was likely to become chargeable, generally, without ſaying *to the ſaid pariſh of* Spalding. And by lord *Hardwicke* Ch. J. There muſt be either an expreſs adjudication, or a plain reference to the complaint; becauſe it is the very point upon which the juriſdiction of the two juſtices is founded. Here the complaint is right; but the adjudication is at large, there being no words of reference. It is only that the pauper is likely to become chargeable. Now this may be to his relations or parents, as well as to the pariſh. And he cited the caſe of *St. Nicholas*'s and *St. Peter*'s as ſimilar to the preſent: And ſaid, that the caſe of *Barholm* and *Witham* was not finally determined by the court, but was referred to the judge of aſſize. And he added, that there was no caſe that he could meet with, upon the ſtricteſt enquiry, where an adjudication at large, without ſome words of reference to the complaint, was holden to be good. *Burrow's Settl. Caſ.* 39.

So in the caſe of *Uſculm* and *Clyſthydon*, *M.* 13 *G.* 2. It was objected, that the paupers were ſaid to be likely to become chargeable, but did not ſay to what pariſh. The words were, "And whereas upon due examination and "enquiry it appears to us, and we do accordingly adjudge "that they are likely to become chargeable." By *Lee* Ch. J. and the court: The objection is fatal. A complaint muſt appear of the paupers being likely to become chargeable to the pariſh from whence removed; and there muſt be an adjudication of the truth of it. For the juſtices have no authority without ſuch complaint and adjudication. We cannot ſupport an order by implication. There is no neceſſity indeed for any particular form of words. But there muſt be an adjudication of it in ſome words or other. *Burrow's Settl. Caſ.* 138.

And in the ſame term, between the inhabitants of *Netherton* and *Hoblench*, an order was given up as indefenſible, on the like objection. *Burrow's Settl. Caſ.* 139.

Upon

Upon due proof made thereof, as well upon the examination, &c.] *H.* 13 *G.* 2. *K.* and *Fiſherton Dallemer.* Upon *due conſideration* was held to be ſufficient; for that due conſideration implies a due examination. 2 *Seſſ. C.* 45.

Examination] *T.* 12 *W. Ware* and *Stanſtead Mount Fitchet.* Exception to an order, for that it was ſaid, it appears upon examination *before us or one of us.* By the court: The examination ought to be before both, becauſe both are to make the judgment of removal. And *Gould* J. ſaid, the ſtatute directed, and the practice was, to make *complaint* to one juſtice, and he grants his warrant to bring the pauper before two juſtices, and then they two examine and remove. 2 *Salk.* 488.

Examination of the ſaid John Thomſon] *T.* 11 & 12 *G.* 2. *K.* and *Wykes.* A perſon ought to have notice, and be heard before he be removed: for he may produce a certificate, or give other ſufficient ſecurity, or ſhew cauſe otherwiſe why he ought not to be removed; eſpecially as he himſelf perhaps, by the removal, is likely to be the greateſt ſufferer: and therefore natural juſtice requires that he be not condemned unheard. *Andr.* 238.

Of the ſaid John Thomſon *upon oath*] *H.* 10 *G. Munger-hunger* and *Warden.* Exception was taken to an order, for that it was ſaid to be made upon *due examination,* without ſaying *upon oath:* But by the court, This is ſufficient; for where it is ſaid to be made upon due examination, it ſhall be underſtood to be upon oath. *Seſſ. C. V.* 2. 40.

In the aforeſaid caſe of *K.* and *Wykes,* one juſtice took the examination, and other two juſtices removed upon that ſole examination, and in the order did ſet forth that the party was examined before themſelves; for which, and for not ſummoning the party before them, an information was granted againſt the two juſtices. *Andr.* 238.

M. 13 *G.* 2. *Coln St. Aldwin's* and *Highworth.* The order of removal appeared to be wholly grounded upon an examination taken by two juſtices of another county; and was therefore quaſhed. They ought to have examined into the matter themſelves; and in the preſence of both together, and not ſeparately. And tho' they were not bound to ſet forth the grounds of their adjudication; yet when they do ſet them forth, the court are to judge of them. And in this caſe, the examination which was relied upon being taken by two juſtices of another county, and the perſon

perſon examined by thoſe juſtices remained ſtill alive, for ought that appears to the contrary; it is plain, this depoſition ought not to have been received as evidence to ground their adjudication upon; tho' it might perhaps have been uſed as concurring evidence. And lord chief juſtice *Lee* ſaid, he had often heard it declared, that both juſtices ought to be preſent at the *viva voce* examination of the witneſſes. And Mr. juſtice *Page* ſaid, he remembred a caſe, wherein it was determined that both juſtices muſt be preſent; and that it is not ſufficient for one juſtice to examine the matter and tranſmit it to the other, and that other to ſign the order without examining into the matter himſelf. *Burrow's Settl. Caſ.* 136.

Do adjudge the ſame to be true] *T.* 13 *W. Suddeſcomb* and *Burwaſh.* Order quaſhed, becauſe it was only ſaid to be complained by the officers, that the perſon removed was likely to become chargeable, but not adjudged ſo by the juſtices. 2 *Salk.* 491.

H. 4 *G. K.* and *Weſtwood.* Order quaſhed, becauſe the juſtices only ſay, *We order him to be removed to ſuch a place, as the place of his laſt legal ſettlement*, without adjudging that to be the place. *Str.* 73.

T. 3 & 4 *G.* 2. *K.* and *Minchin-hampton.* Order, Whereas complaint is made to us, that ſuch a perſon is now become chargeable, we do adjudge that the laſt place of his lawful ſettlement is in the pariſh of *Minchin-hampton.* Objected, that here is no adjudication that he is likely to become chargeable; and quaſhed for this reaſon. 2 *Seſſ. C.* 93.

T. 4 *G. Stallinburgh* and *Haxhay.* On examination we *do believe* the ſame to be true. Quaſhed; for a man may believe a thing on uncertain evidence. 1 *Seſſ. C.* 131.

E. 10 *An. Waltham Magna* and *Parva.* Whereas ſuch a perſon is likely to become chargeable, as we are *credibly informed*, theſe are therefore to require you to remove: Quaſhed, for that here is no adjudication that he is likely to become chargeable, and this is only the belief of another. *Caſ. of S.* 38.

And we do likewiſe adjudge that the lawful ſettlement] *E.* 9 *W. Bury* and *Arundel.* Whereas complaint hath been made unto us, that *Jacob Duckin*, with his wife and children, came from his place of abode and laſt legal ſettlement in *Bury* to *Arundel*, We therefore require you to remove: Naught; for there is no adjudication of the juſtices which was his laſt legal ſettlement, but only a complaint that

Bury

Bury was, which doth not appear whether true or falſe. 2 *Salk.* 479.

T. 12 *An. Eglium* and *Hartley-wintly.* An order adjudges that a man was ſettled at ſuch a place; and therefore they remove his widow thither. Quaſhed; for that here was no adjudication of the widow's ſettlement, and ſhe might have gained a ſettlement after the death of her huſband. 1 *Seſſ. C.* 45.

T. 3 & 4 *G.* 2. *K.* and *Warnhill.* Adjudication that the *laſt legal place* of the pauper is at *Warnhill* in the county of *Berks.* Quaſhed; for that is no adjudication of the *ſettlement.* 2 Seſſ. C. 92.

M. 3 *An.* It was held, that *legal ſettlement* and *laſt legal ſettlement* are the ſame thing; becauſe by every new ſettlement the precedent is diſcharged. 2 *Salk.* 473.

M. 12 *An. St. Mary Ottery* and *St. Mary's.* The juſtices in their order ſay, that the poor perſon was laſt ſettled there *according to their knowledge.* By the court: They ſhould have ſaid, he was laſt ſettled there; an order is a judgment, and muſt be certain and poſitive: he might have been ſettled elſewhere, and they not know it. Quaſhed. *Caſes of S.* 32.

And provide for them] The ſtatute directs, that the place whither they are ſent ſhall receive and *provide* for them; for which reaſon the ſame is inſerted here in the order: but it ſeemeth that when the removal is into another county, thoſe words are unneceſſary, becauſe ineffectual; for that the juſtices in one county cannot take order for the relief of poor perſons in another county.

[Beſides this general form of removal to the place of ſettlement, there may be other removals, as of wives to their huſbands, children to their parents, apprentices or ſervants to their maſters, or of perſons brought illegally from one pariſh to another. But this is not in purſuance of the ſtatute of the 13 & 14 *C.* 2. but of the general power of the juſtices in regulating matters relating to poor perſons. Thus in the caſe of *K.* and *Banbury.* A conſtable without warrant brought a child from *Broughton* to *Banbury.* Two juſtices of *Banbury* made an order, reciting the fact, to return the child to *Broughton*, there to be provided for according to law. The court held the order good, for returning the child to the wrong doers; and therefore that part of the order was affirmed; but it ought not to be ſaid, to be there provided for; but they are to be left to take their courſe accord-

ing

ing to law; therefore that part was quaſhed. *Comb.* 372.

So in the caſe of *K.* and *Graveſend*, *E.* 13 *W.* Two juſtices ſend *Jane Goodbury* from *Graveſend* to *Lawton* her maſter in *Chadwell* (with whom ſhe was hired as a ſervant for a year) until ſhe ſhould be diſcharged. Afterwards, on the 21ſt of *November* (the firſt order being made the 6th of *November* by the juſtices of *Graveſend*) another order was made by two juſtices of the county of *Eſſex*, to ſend the ſame perſon from the pariſh of *Chadwell* to the pariſh of *Graveſend*. It was inſiſted that the ſecond order was ill, being made before any appeal from the firſt order, or diſcharge from the ſervice. But not allowed by the court: For the firſt order was to ſend the perſon to her maſter, and not to ſend her to the pariſh of *Chadwell* as the place of her ſettlement. *Comyns.* 97.——For both the orders in this caſe might well ſtand together: and the queſtion upon the merits might be determined on appeal to the ſecond order.]

SO much concerning the uſual form of an order of removal: And after ſuch order and adjudication is made, that the ſame may appear upon record afterwards, in order to charge the pariſh, it was ſaid by *Holt* Ch. J. (1 *Salk.* 406.) that the moſt regular way for the juſtices to proceed is to make a record of the complaint and adjudication, and upon that to make a warrant to the churchwardens and overſeers, to convey the perſons to the pariſh to which they ought to be ſent, and deliver in the record by their own hands into court the next ſeſſions, to be kept there amongſt the records, to charge the pariſh. But how ſuch record ſhall charge the pariſh is not perhaps very evident; unleſs it ſhall appear likewiſe, that a removal was made in purſuance of ſuch order: otherwiſe, how ſhall the pariſh be charged by an order which poſſibly they knew nothing of, and conſequently could have no opportunity to appeal againſt? It is uſual in ſome places, for the overſeers who made the removal, to bring the original order to the next ſeſſions, and there make oath, that they removed the party in purſuance of ſuch order, and if then there appear to be no appeal againſt it, the order is confirmed by the court, and filed amongſt the records. And although ſuch confirmation is merely void, becauſe the ſeſſions have no juriſdiction therein, unleſs in the caſe of appeal, which here is not; yet ſuch confirmation is alſo ſuperfluous and needleſs, for the order not appealed againſt is final without more. And as ſuch order is a record of itſelf, and contains

tains in it the adjudication of the juſtices, it ſeemeth that the court may record thereupon likewiſe, that no appeal was made, for in that caſe they are the proper judges whether an appeal was made or not. But ſtill it ſeemeth, that unleſs it be upon appeal, they have no power to enquire concerning the removal, for that as to them is extrajudicial: But the juſtices, who made the order, have a right to ſee it executed; and therefore they may enquire upon oath, whether the removal was duly made; and if it was, they may record the whole. Which record of the whole proceedings, being delivered in at the next ſeſſions, and the court thereupon recording likewiſe that no appeal was made, in ſuch caſe perhaps the pariſh may be concluded. And the form thereof may be thus:

Weſtmorland. BE *it remembered, that on the nineteenth day of* January, *in the thirty-ſecond year of the reign of our lord* George *the ſecond of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth, at* Middleton *in the county aforeſaid,* Roger Thirnbeck *overſeer of the poor of the townſhip of* Middleton *aforeſaid in the county aforeſaid, cometh before us,* John Moore, *eſquire, and* Richard Burn, *clerk, two of the juſtices of our ſaid lord the king, aſſigned to keep the peace of our ſaid lord the king within the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, and of the quorum, And complaineth to us the ſaid juſtices, and giveth us to underſtand and be informed, that* Solomon Caradice, *ſon of* Alice Caradice, *aged nine years, hath come to inhabit and doth inhabit in the ſaid townſhip of* Middleton *in the county aforeſaid, and is likely to become chargeable to the ſaid townſhip, and that the ſaid* Solomon Caradice *hath not gained any legal ſettlement within the ſaid townſhip, nor hath produced any certificate owning him the ſaid* Solomon Caradice *to be ſettled elſewhere; and thereupon he the ſaid* Roger Thirnbeck *prayeth our warrant to remove and convey the ſaid* Solomon Caradice *to the pariſh or place where he the ſaid* Solomon Caradice *was laſt legally ſettled.*

And on the ſaid nineteenth day of January *in the year aforeſaid, at* Middleton *aforeſaid, in the county aforeſaid,* Margaret Caradice, *grandmother of the ſaid* Solomon Caradice, *cometh before us the juſtices aforeſaid, and upon her oath on the holy goſpel to her then and there by us the juſtices aforeſaid adminiſtred, depoſeth and ſweareth, that ſhe the ſaid* Margaret Caradice *had a daughter whoſe name was* Alice Caradice, *which* Alice Caradice *was never married, and is now dead, and that ſhe the ſaid* Alice Caradice *did bear the ſaid* Solo-

mon *her ſon, at the pariſh of* Beetham *in the county aforeſaid, and that the ſaid* Solomon *hath been carried or gone about the country ever ſince in a ſtate of vagrancy, that is to ſay, wandring and begging, and doth now inhabit in the ſaid townſhip of* Middleton *with* William Caradice *grandfather of him the ſaid* Solomon.

Whereupon, and on due conſideration had of the premiſſes, we the juſtices aforeſaid, on the ſaid nineteenth day of January, *in the year aforeſaid, at* Middleton *aforeſaid in the county aforeſaid, do make our warrant under our hands and ſeals in the form and words following; that is to ſay,* [Here ſet forth the warrant of removal.]

And afterwards, on the twenty-firſt day of January *in the year aforeſaid, at* Middleton *aforeſaid in the county aforeſaid, the ſaid* Roger Thirnbeck, *overſeer of the poor aforeſaid, cometh before us the juſtices aforeſaid, and upon his oath on the holy goſpel to him by us the ſaid juſtices adminiſtred, depoſeth and ſweareth, that on the twentieth day of* January *in the year aforeſaid, he the ſaid* Roger Thirnbeck *did remove and convey the ſaid* Solomon Caradice *from and out of the ſaid townſhip of* Middleton *to the ſaid pariſh of* Beetham, *and him the ſaid* Solomon Caradice, *together with a true copy of our warrant aforeſaid, did deliver to* O. P. *overſeer of the poor of the pariſh of* Beetham *aforeſaid, at the pariſh of* Beetham *aforeſaid, in the county aforeſaid. In witneſs whereof, we the ſaid juſtices, at* Middleton *aforeſaid, in the county aforeſaid, the twenty-firſt day of* January *in the year aforeſaid, to this preſent record do ſet our hands and ſeals.*

And to this may be annexed the order of removal, confirmed at the ſeſſions on appeal, or not appealed againſt. And it may be proper to have duplicates; one filed at the ſeſſions, and the other kept by the townſhip.

By the 3 *W. c.* 11. as aforeſaid, there is a penalty of 51 inflicted on the churchwardens or overſeers not receiving a perſon ſent by warrant of removal. On which this caſe happened: *M.* 28 *G.* 2. *K.* and *Davis.* Indictment for refuſing to receive a pauper, ſent by order of two juſtices to the liberty of the *Tower.* Plea, not guilty, Verdict againſt the defendant. It was moved in arreſt of judgment, that the 3 *W. c.* 11. having directed another method of puniſhment, to wit, a fine to be levied by warrant of diſtreſs in a ſummary way, that ſhould be ſtrictly purſued. — *Denniſon* J. If a ſtatute create a new offence, and give a puniſhment, that rule muſt be followed; but if the offence was before at common law, and a

new puniſhment only given, it is indictable alſo. So if one ſtatute give one puniſhment, and another ſtatute give another puniſhment, the proſecutor has his election. This was an offence before the 3 *W.* Such a pariſh officer might have been indicted on the 13 & 14 *C.* 2. *c.* 12. or what would have become of a pauper in caſe of diſobedience between the paſſing thoſe acts? But the 3 *W.* *c.* 11. does not relate to removals from pariſh to pariſh, but from county to county; and therefore there is no remedy but by indictment. —— *Foſter* J. In all caſes where a juſtice has power given him to make an order, and direct it to an inferior miniſterial officer, and he diſobeys it, if there be no particular remedy preſcribed, it is indictable. And judgment was given againſt the defendant. [To which may be added, that the ſtatute of 13 & 14 *C.* 2. *c* 12. requires in expreſs words, that ſuch officer refuſing *ſhall be bound over to the aſſizes or ſeſſions there to be indicted.*]

If the perſon removed returns of his own accord, without a certificate; the aforeſaid act of the 13 & 14 *C.* 2. *c.* 12. and alſo the vagrant act of the 17 *G.* 2. *c.* 5. have directed that he ſhall be ſent to the houſe of correction, according as is above expreſſed. In the caſe of *K.* and *Angell*, *T.* 8 *G.* 2. The juſtices of *Berkſhire* had a petty ſeſſions to ſearch after vagrants, and a poor man reſiding in the pariſh of *Bingfield*, being examined, confeſſed himſelf to be ſettled in the pariſh of *Sunning*; whereupon the juſtices ordered him to be removed to *Sunning*. On his returning from *Sunning* without a certificate, the defendant, who was one of the juſtices that had been preſent at the ſaid petty ſeſſions, did, without any ſummons, or oath made of his return, commit the man to the houſe of correction, where he was kept three days. Upon this, the court was moved to grant an information againſt the juſtice. The court allowed the tranſactions of the petty ſeſſions in this caſe to be irregular, becauſe there was no complaint made of his being chargeable or likely to be chargeable to the pariſh of *Bingfield*; but yet, as that was only a miſtake of judgment, the court would not have thought it worthy of puniſhment; but the ſending him to the houſe of correction, after having convicted him unheard, being contrary to natural juſtice, they were inclinable to grant an information, but as no malice appeared in the juſtice, the court allowed the proſecutor to accept of ſome propoſal made by the juſtice, to make him ſatisfaction. *Caſes in the time of lord* Hardwicke. 124.

In the caſe of *Baldwin* and his wife againſt *Blackmore*, eſquire, *E.* 31 *G.* 2. *Baldwin* and his wife were removed by order of two juſtices from *Marſden* to *Banknewton*. Which order was not appealed againſt. Afterwards, they both of them returned to *Marſden* without bringing a certificate. Of which, complaint being made in writing and upon oath to the defendant Mr. *Blackmore*, who was a juſtice of the peace for the county of *Lancaſter*, he iſſued his warrant to bring them before him; who being accordingly brought, and the facts fully proved upon oath, he committed them to the houſe of correction, until they ſhould be diſcharged from thence by due courſe of law. Upon the trial of this cauſe, there was a verdict for the plaintiff, and 1s damages, ſubject to the opinion of the court, on the two following queſtions: 1. Whether there ought not to have been a previous conviction of vagrancy? 2. Whether the wife could be convicted of vagrancy, or be liable to be ſent to the houſe of correction for returning without a certificate, as ſhe only accompanied and reſided with her own huſband? On the argument of this cauſe, lord *Manſfield* intimated, that it would be a very right thing to compromiſe this matter; and he deſired to be informed how the uſage had been, about ſending the wife to the houſe of correction with the huſband: (tho' it would not indeed, as he obſerved, alter the law.) Afterwards this caſe being mentioned as ſtanding for the opinion of the court, Mr. *Norton* (for the defendant) ſaid, he had ſeveral certificates of its being the practice, for juſtices to commit the wife, as well as the huſband, for returning to the pariſh from whence they have been removed, altho' ſhe ſo returned with her huſband.—Lord *Mansfield* delivered the reſolution of the court: He obſerved, that it was manifeſt the juſtice had not acted intentionally wrong. And it is plain that the jury were of that opinion, as appears by their giving only 1s damages. The court would gladly therefore have leaned towards excuſing this gentleman from ſuffering for what he had honeſtly and without any bad intention done, if they could have found him juſtifiable by any legal excuſe. But there is one fatal objection to his proceeding, which we cannot get over, and which puts all the other points out of the caſe; and that is, that the warrant of commitment is illegal. The legality of the warrant depends upon two acts of parliament, or at leaſt upon one of of them. For there are two acts of parliament, upon one of which two this warrant muſt be founded; tho' it doth not appear upon which of the two the juſtice proceeded.

These

These two acts are, the 13 & 14 *C.* 2. *c.* 12. (a law made before the certificates under the late acts existed;) and the 17 *G.* 2. *c.* 5. (which relates to persons returning without bringing such a certificate.) Now the warrant is not within the former of these acts: The commitment is, *till discharged by due course of law*; whereas upon this act it should have been, to the house of correction, *there to be punished as a vagabond*, or, to a public workhouse, *there to be employed in work and labour*. Nor can this warrant be good on the latter act; because the power given to the justice by that act is, to commit such offenders to the house of correction, *there to be kept to hard labour for any time not exceeding one month:* Whereas this warrant is quite general: It is an indefinite commitment; not for a precise limited time as the act directs. Therefore the warrant of commitment is totally illegal; and consequently, the plaintiff is intitled to the damages that he has recovered. *Burrow, Mansfield.* 595.

Note, It seemeth advisable, if the party returns without a certificate, not to send him to the house of correction till the time for appealing against the order for removal shall be expired; for the sessions may quash the order. And the statute of *C.* 2. says, if he shall not remain in such parish *where he ought to be settled*, he shall be sent to the house of correction. And the 17 *G.* 2. says, All persons who shall *unlawfully* return to such parish or place from whence they have been *legally* removed by order of two justices, shall be so sent to the house of correction. It is true, the order may be supposed *legal* till reversed: But it may put the pauper to great inconvenience, in removing his goods, family, and trade; and then returning (possibly) after the next sessions.

ii. Order of removal of a certificate person.

As it will appear from what hath been said under the former head, concerning the removal of poor persons having no certificate, that in most of the books there are many bad orders; so it will appear also from thence, and from what will be said under this head, concerning the removal of certificate persons, that as to this kind of removal there is scarce one good order (which is a little surprizing in a matter of daily practice), yea scarce one which is capable of being amended even by the statute of the 5 *G.* 2. for there are objections which go to the very essence and substance of the order, especially the want of proper adjudications, either that the party is

become chargeable, or of the place of his laſt legal ſettlement (for he may have gained one after the certificate), or both: for judgment without adjudging, is a contradiction; and where there is no judgment, there is in ſtrictneſs nothing to appeal againſt, but only an order that the pariſh ſhall receive and provide for a perſon, who for aught appears doth not belong to them.

By the 8 & 9 *W.* c. 30, *If any perſon who ſhall come into any pariſh or place, there to reſide, ſhall deliver a certificate to one of the churchwardens or overſeers there, ſuch certificate ſhall oblige the pariſh or place granting the ſame, to receive and provide for the perſon mentioned in the ſaid certificate, together with his family, as inhabitants of that pariſh, whenever they ſhall happen to become chargeable to, or be forced to aſk relief of the pariſh, townſhip, or place, to which ſuch certificate was given; and then, and not before, it ſhall be lawful for any ſuch perſon, and his children, though born in that pariſh, not having otherwiſe acquired a legal ſettlement there, to be removed, conveyed, and ſettled in the pariſh or place from whence ſuch certificate was brought.* ſ. 1.

And by the 3 *G.* 2. c. 29. *When any overſeer or other perſon ſhall remove back any perſons or their families, reſiding under a certificate, and becoming chargeable, to the pariſh or place to which they ſhall belong; ſuch overſeer or other perſon ſhall be reimburſed ſuch reaſonable charges as they may have been put unto in maintaining and removing ſuch perſons, by the churchwardens or overſeers of the place to which ſuch perſons are removed; the ſaid charges being firſt aſcertained and allowed of by one or more juſtices for the county or place to which ſuch removal ſhall be made; which ſaid charges ſo aſcertained and allowed, ſhall, in caſe of a refuſal of payment, be levied by diſtreſs and ſale of the goods of the churchwardens and overſeers of the place to which ſuch certificate perſon is removed, by warrant of ſuch juſtice or juſtices.* ſ. 9.

Form of an order of removal of a certificate perſon.

Weſtmorland. { To the churchwardens and overſeers of the poor of the pariſh of *Orton* in the ſaid county of *Weſtmorland*, and to the churchwardens and overſeers of the poor of the pariſh of *Penrith* in the county of *Cumberland*.

WHEREAS *complaint hath been made by the churchwardens and overſeers of the poor of the pariſh of* Orton *aforeſaid in the ſaid county of* Weſtmorland, *unto us whoſe*

whoſe names are hereunto ſet, and ſeals affixed, being two of his majeſty's juſtices of the peace in and for the ſaid county of Weſtmorland, *and one of us of the* quorum, *that* John Thomſon, Mary *his wife*, Thomas *their ſon aged eight years, and* Agnes *their daughter aged four years, having for ſome time laſt paſt dwelt in the pariſh of* Orton *aforeſaid, being allowed ſo to do by reaſon of a certificate, bearing date the—— day of —— in the year of our Lord —— under the hands and ſeals of* A. C. *and* B. C. *churchwardens, and* A. O. *and* B. O. *overſeers of the poor of the ſaid pariſh of* Penrith, *atteſted by* A. W. *and* B. W. *two credible witneſſes, and allowed by* J. P. *and* K. P. *eſquires, two of his majeſty's juſtices of the peace for the ſaid county of* Cumberland, *according to the directions of the ſeveral acts of parliament in ſuch caſe made and provided, are become chargeable to the ſaid pariſh of* Orton; *And whereas it appears to us, as well upon the oath of the ſaid* John Thomſon *as otherwiſe, that neither they the ſaid* John Thomſon, Mary *his wife*, Thomas *and* Agnes *their children, nor any of them, have gained any legal ſettlement ſince the date of the ſaid certificate: Whereby, and upon due conſideration had of the premiſes, it appears to us, and we do hereby adjudge, that the ſaid* John Thomſon, Mary *his wife, and* Thomas *and* Agnes *their children, are become chargeable to the ſaid pariſh of* Orton, *and that the place of the laſt legal ſettlement of them and every of them is in the ſaid pariſh of* Penrith *in the ſaid county of* Cumberland: *Theſe are therefore to require you the ſaid churchwardens and overſeers of the poor of the ſaid pariſh of* Orton, *or ſome or one of you, to convey the ſaid* John Thomſon, Mary *his wife, and* Thomas *and* Agnes *their children, from and out of your ſaid pariſh of* Orton, *to the ſaid pariſh of* Penrith, *and them to deliver to the churchwardens and overſeers of the poor there, or to ſome or one of them, together with this our order, or a true copy thereof, at the ſame time ſhewing to them the original; And we do alſo hereby require you the ſaid churchwardens and overſeers of the poor of the ſaid pariſh of* Penrith, *to receive and provide for them as inhabitants of your pariſh. Given under our hands and ſeals the —— day of —— in the year of our Lord ——*

Allowed by J. P. *and* K. P. *eſquires, two of his majeſty's juſtices of the peace*] *H.* 9 *An. K.* and *Newton.* Order for removing a certificate perſon, not ſetting forth that it was allowed by two juſtices, but adjudging the pariſh which granted the certificate to be the place of the laſt legal ſettlement. By Mr. J. *Probyn:* The order is good, for it ſets out that the pauper came by certificate; and adjudges

judges that he was actually chargeable, and that *Newton* was the place of his last legal settlement, he having gained no settlement elsewhere since; which sets out the whole reason of their judgment, and would make the settlement good, if there had been no certificate. 1 *Sess. C.* 149.

M. 7 *G. Barleycroft* and *Cole-overton.* Order of removal of a certificate person; It was not said that the certificate was *attested*, but only that it was *allowed.* But by the court: The attestation is by the statute made previous to the allowance; and therefore when they say it was allowed according to the act of parliament, we must intend it was attested, for otherwise it could not be so allowed. And the order was confirmed. *Str.* 402.

Are become chargeable] *E.* 9 *An.* 2. and *Brumstead.* An order of two justices for the removal of a man that came into a parish by a certificate, was quashed upon this exception; It was said in the order, that they removed him, because he was *likely to become chargeable:* And the whole court were of opinion, that the justices cannot remove a person that comes into a parish by a certificate, till he is actually chargeable to the parish. 2 *Salk.* 530.

H. 4 *G. Teelby* and *Willerton.* The justices remove a certificate woman, being *likely* to become chargeable. But by the court: She is by the statute not removable, till she actually becomes chargeable. And the order was quashed. *Str.* 77.

And we do hereby adjudge] *T.* 2 *An. Maldon* and *Fleetwick.* An order was made, reciting, that whereas complaint hath been made unto us, that such a person, who is lately come into the parish with a certificate, is actually chargeable to the parish; these are therefore to require you to remove: And quashed, for that there was no adjudication. 2 *Salk.* 530.

T. 15 *G.* 2. *Great Bedwin* and *Wilcot.* Order of removal of a certificate person, in which there was no complaint of the churchwardens or overseers, nor any adjudication that the certificate person is actually become chargeable. On appeal, the sessions in pursuance of the 5 *G.* 2. amend the order in these particulars, as matter of form only, and insert in the said order such complaint and adjudication. And now the question was, Whether these amendments went only to matter of form, or to the substance and merit of the order? By *Lee* Ch. J. There has been but one case

caſe in this court on this act ſince the making of it, and that was not determined: The preſent ſeems to be a very ſtrong caſe againſt the power of amending. For there muſt be a *complaint* from the overſeers, otherwiſe the juſtices have no power to remove; and a certificate perſon muſt be *adjudged* to be actually chargeable, otherwiſe he cannot be removed: And theſe amendments might be the real merits on which this caſe depended. And it would be a detrimental conſtruction of the act, to take it ſo largely; and would be giving the ſeſſions an original juriſdiction. And quaſhed by the whole court. 2 *Seſſ. C.* 142. *Str.* 1158. *Burrow's Settl. Caſ.* 163.

But after all, it doth not appear, how it becomes neceſſary in the order of removal, to take any notice of the certificate at all, or to make any further uſe of it than as evidence to the juſtices of the ſettlement: And if it is not neceſſary to recite it, it is better to omit the ſame; becauſe a miſrecital, either in the date, or in the names of the perſons, or in any other material part, will be fatal, for that then there will be no ſuch certificate as is there recited, and the order muſt fall of courſe. And I do not ſee, why the form may not be much more plain and ſimple by drawing the ſame very little varied from the common form of an order of removal of other perſons having no certificate. It is true, where the perſons are only *likely to be chargeable*, it is then requiſite to ſet forth in the order, that they have no certificate; for if they have one, they cannot be removed till they actually be chargeable. But if the order do ſet forth that they are chargeable, in that caſe it is not at all material whether they have a certificate or not; for in both caſes alike, they are then equally removable. And if ſo, then the form may be this, both for a certificate perſon, and for a perſon having no certificate, who is actually become chargeable:

Weſtmorland. TO *the churchwardens and overſeers of the poor of the pariſh of* Orton *in the ſaid county of* Weſtmorland, *and to the churchwardens and overſeers of the poor of the pariſh of* Penrith *in the county of* Cumberland, *and to each and every of them.*

Upon the complaint of the churchwardens and overſeers of the poor of the pariſh of Orton *aforeſaid in the ſaid county of* Weſtmorland, *unto us whoſe names are hereunto ſet and ſeals affixed, being two of his majeſty's juſtices of the peace in and for the ſaid county of* Weſtmorland, *and one of us of the* quorum, *that* John Thomſon, Mary *his wife*, Thomas *their ſon aged eight years, and* Agnes *their daughter aged four years,*

years, have come to inhabit in the ſaid pariſh of Orton, *not having gained a legal ſettlement there, and that the ſaid* John Thomſon, Mary *his wife, and* Thomas *and* Agnes *their children, are now chargeable to the ſaid pariſh of* Orton: *We the ſaid juſtices, upon due proof made thereof, as well upon the examination of the ſaid* John Thomſon *upon oath, as otherwiſe, and likewiſe upon due conſideration had of the premiſſes, do adjudge the ſame to be true; and we do likewiſe adjudge, that the lawful ſettlement of them the ſaid* John Thomſon, Mary *his wife, and* Thomſon *and* Agnes their *children, is in the ſaid pariſh of* Penrith *in the ſaid county of* Cumberland: *We therefore require you the ſaid churchwardens and overſeers of the poor of the ſaid pariſh of* Orton, *or ſome or one of you, to convey the ſaid* John Thomſon, Mary *his wife, and* Thomas *and* Agnes *their children, from and out of your ſaid pariſh of* Orton, *to the ſaid pariſh of* Penrith, *and them to deliver to the churchwardens and overſeers of the poor there, or to ſome or one of them, together with this our order, or a true copy thereof, at the ſame time ſhewing to them the original; And we do alſo hereby require you the ſaid churchwardens and overſeers of the poor of the ſaid pariſh of* Penrith, *to receive and provide for them as inhabitants of your pariſh. Given under our hands and ſeals the —— day of ——— in the ——— year of the reign of his majeſty king* George *the third.*

It doth not appear what ſhall be done, if a certificate perſon, after having been removed, ſhall return with a new certificate; that is, whether or no the pariſh ſhall be obliged to receive him again, until he ſhall again become chargeable. It ſometimes happeneth, that a certificate perſon is decoyed into acceptance of relief from the pariſh officers, in order that they may get rid of him. If a new certificate ſhall intitle him to return, this kind of practice may be fruſtrated. Upon a removal, the certificate is at an end. But the pariſh may grant him another. And there is no law which ſeemeth to give power to any pariſh to refuſe him.—But this is a caſe not likely to happen frequently; becauſe the pariſh granting the certificate muſt pay the charges of removing ſuch certificate perſons when chargeable, and of their maintenance in the mean time.

iii. Appeal againſt the order of removal.

Power of appealing.

1. *All perſons who think themſelves aggrieved by any ſuch judgment of the ſaid two juſtices, may appeal to the juſtices of the*

the peace of the ſaid county, at their next quarter ſeſſions, who ſhall do them juſtice according to the merits of their cauſe. 13 & 14 C. 3. c. 12. ſ. 2.

And by the 8 & 9 *W.* c. 30. *The appeal againſt any order of removal of any poor perſon, ſhall be had, proſecuted, and determined, at the general or quarter ſeſſions of the peace for the county, diviſion, or riding, wherein the pariſh, townſhip, or place, from whence ſuch poor perſon ſhall be removed doth lie, and not elſewhere.* ſ. 6.

All perſons who think themſelves aggrieved] *E.* 4 *W. K.* and *Hartfield.* Two juſtices removed *Nicholas Wells*, from the pariſh of *Hartfield*, to the pariſh of *Frampfield*; from which order, *Wells* the party himſelf, and not the pariſh, appealed. It was objected, that the party himſelf cannot appeal, becauſe the appeal is only given to the pariſh aggrieved: But by the whole court: The party may appeal as well as the pariſh. *Carth.* 222.

T. 4 *G. K.* and *Almonbury.* An order of two juſtices was quaſhed at the ſeſſions upon appeal, without ſaying, *at the appeal of the party aggrieved.* And the court inclined to quaſh the order for this fault, till they were informed the precedents were moſt of them ſo, and for that reaſon and that only, as *Pratt* Ch. J. declared, the order was confirmed. *Str.* 96.

At the next general or quarter ſeſſions] *E.* 2 *G.* 2. *K.* and *Norton.* Exception was taken to an order of ſeſſions, for diſcharging an order of removal, becauſe the juſtices order was dated *June* 21, and the ſeſſions order was not till *Michaelmas* ſeſſions following, ſo that *Midſummer* ſeſſions intervened. To this it was anſwered, that by the expreſs words of the ſtatute the appeal is to be to the next ſeſſions after the parties find themſelves aggrieved, which is not till the removal: and for aught appears *Michaelmas* ſeſſions might be the next ſeſſions after the grievance. And ſo it was held in the caſe of *Milbrook* and *St. John*'s in *Southampton*, *M.* 1 *G.* To which the court agreed, and the ſeſſions order was affirmed. *Str.* 831.

T. 11 *W. K.* and *Langley.* It was moved to quaſh an order of ſeſſions, becauſe the juſtices had adjourned the appeal from one ſeſſions to another, and ſo the determination upon the appeal was not at the next quarter ſeſſions. But by the court; The appeal muſt be lodged at the next quarter ſeſſions, but when it is lodged, the juſtices may adjourn it. 2 *Salk.* 605. *Comb.* 365.

E. 19 *G.* 3. *K.* and the juſtices of *Glouceſterſhire.* On a motion for a *mandamus* to compel the juſtices of the quarter

quarter ſeſſions of *Glouceſterſhire*, to receive an appeal againſt an order of removal, it appeared from the affidavits, that the examination of the pauper was taken in *Auguſt*; the order of removal the 12th of *November* following; and the ſeſſions, where the appeal was tendered, held on the 12th day of *January* in the enſuing year; that *no notice* of appeal had been ſerved (for which the reaſon aſſigned was, that the appellants had not been able to get their witneſſes ready till it was too late to give ſuch notice); that the court had been moved to receive the appeal, and adjourn the conſideration of it till the following ſeſſions, and had refuſed. The court was clearly of opinion, that the juſtices ought to have received the appeal; and the rule for a *mandamus* was made abſolute. *Douglas.* 182.

In the ſame term, in the caſe of *K.* and the juſtices of the *Eaſt Riding of Yorkſhire*, it was moved for a *mandamus* to receive an appeal againſt an order of removal on the following facts: The order of removal had been made by the two juſtices on the 22d of *September*, but the pauper was not removed till the 5th of *October*. *Hull*, the place to which the pauper had been removed from *Whitby*, is 60 miles from *Northallerton*, where the ſeſſions began on the 6th of *October*. At which ſeſſions no appeal was entred. And at the *Epiphany* ſeſſions following, which began on the 12th of *January*, *Hull* offered an appeal, but the juſtices refuſed to hear it, thinking themſelves bound by the words of the ſtatute, which directs the appeal to be to the *next* ſeſſions. On ſhewing cauſe, it was inſiſted, that the ſucceeding ſeſſions had no juriſdiction; that an appeal might have been entred at the *Michaelmas* ſeſſions, on the ſecond or third day, for that no notice is neceſſary in order to intitle the parties to *enter* their appeal, altho' if there has been no notice, or not reaſonable notice, the juſtices are bound to adjourn the hearing till the enſuing ſeſſions. The court ſaid, that by *next* ſeſſions the ſtatute meant the next *poſſible* ſeſſions, and that here it was impoſſible for the appellants to lodge their appeal at the *Michaelmas* ſeſſions. And the rule was made abſolute for a *mandamus*. *Douglas.* 183.

But where the ſeſſions itſelf is adjourned, the ſtyle of the ſeſſions ought not to run *at ſuch a ſeſſions held by adjournment*, but the time of the firſt meeting of the ſeſſions ought to be ſet forth, and that the ſame was continued to ſuch further time by adjournment: As in the caſe of *Q.* and the inhabitants of *Hindercleave:* An order made at the general quarter ſeſſions of the peace *held by adjournment* was quaſhed, becauſe it did not appear that this was the

next

next general quarter ſeſſions, for it might be that the ſeſſions was begun, and continued by adjournment before the order was made. 19 *Viner.* 356.

T. 10 *G.* 2. *Heptonſtall* and *Errendon.* The ſeſſions was ſaid to be holden on ſuch a day *by adjournment*, and it did not appear when the original ſeſſions was holden. And the order was quaſhed for that cauſe. *Burrow's Settl. Caſ.* 88.

H. 20 *G.* 2. *K.* and *Polſtead.* Appeal was made to the quarter ſeſſions in *Suffolk*, held *April* 7, 1746, againſt an order of removal. The ſeſſions was adjourned to *April* 9, at *Woodbridge*, where for want of a ſufficient number of juſtices nothing could be done. *April* 11. a ſeſſions is held at *Ipſwich*, and adjourned to the 14th at *Bury*, where the appeal was allowed. It was moved to quaſh the order of ſeſſions, as made without juriſdiction, the ſeſſions ending for want of an adjournment at *Woodbridge*. And of that opinion was the court; for the words in the 2 *H.* 5. *c.* 4. *and more often if need be*, were never conſidered as giving more than one original ſeſſions in a quarter, but only impowering adjournments. The country muſt take notice of adjournments, but are not ſuppoſed to expect a new ſeſſions till the uſual time. And the order of ſeſſions was quaſhed. *Str.* 1263.

T. 22 & 23 *G.* 2. *Weſt Torrington* and *North Thoreſby.* The ſeſſions was held at *Kirton*; and from thence adjourned to *Caiſter*, at which place no ſeſſions was held purſuant to the ſaid adjournment. Afterwards a ſeſſions was held at *Horncaſtle*; and the appeal was heard and determined there. By the court: The ſeſſions at *Horncaſtle*, could not take up the appeal, for want of juriſdiction. A quarter ſeſſions muſt be holden four times in a year, as directed by ſtatute; and it may be adjourned from time to time, and from place to place: But if it is once dropped, it cannot be reſumed. *Burrow's Settl. Caſ.* 293.

T. 15 *G.* 2. *Roode* and *North Bradley.* A perſon was removed from *Roode* to *North Bradley*. *North Bradley* gave notice of appeal; on which *Roode* took him back, but however got their order confirmed at ſeſſions. The next ſeſſions ſet both aſide as fraudulent. And now *Roode* inſiſted, that the order was good, as not being appealed from at the next quarter ſeſſions: And as to the other, that it was not in the power of one ſeſſions to ſet aſide the act of the other. All being now before the court, they quaſhed the firſt order, as being properly quaſhable on appeal; and would not take notice, that it was not at the

the next ſeſſions after ſervice of the order, which being in the caſe of a recent appeal, they would ſuppoſe to have been ſerved too late for an appeal to the next ſeſſions. And as to the order of confirmation, they quaſhed that, as not being made on any appeal, and conſequently without juriſdiction, and at the ſame time quaſhed the latter part of the ſecond ſeſſions order, which reſcinded that confirmation, as not being properly before them. *Str.* 1168.

For the county, diviſion or riding, from whence the removal was] *E.* 13 *W. Watford* and *Wendover*. Two juſtices of *St. Albans* remove a poor perſon to *Wendover*. *Wendover* appeals to the ſeſſions at *St. Albans*, where the order was confirmed. By the court: The appeal ought to have been to the ſeſſions of the county, and not of the corporation; and as it was, it was *coram non judice*. 2 Salk. 490.

And in the caſe of *Malden*, *M.* 11 *An.* By lord Ch. J. *Parker*; where there is a town corporate that hath ſeſſions of its own, and the juſtices within that town make an order there, if the parties will appeal, they muſt appeal to the county ſeſſions, and not to their own ſeſſions, for then there would be an appeal *ab eodem ad eundem*, there being, it may be, the ſame juſtices ſitting, who made the order. *Caſes of S.* 10.

T. 8 *G.* 3. *Eaſt Donyland* and *St. Giles's Colcheſter*. Two juſtices for the borough of *Colcheſter* removed the pauper from *St. Giles*'s in *Colcheſter* to *Eaſt Donyland* in *Eſſex*; and on appeal to the quarter ſeſſions of the borough, the juſtices there confirm the order, and ſtate a caſe ſpecially upon the facts for the opinion of the court of king's bench. Upon arguing the matter there, it was obſerved, that the appeal ought to have been to the county ſeſſions. Unto which it was anſwered, that the parties having acquieſced in the juriſdiction, and entred upon the merits, and actually ſettled a caſe for the opinion of the court, they were not at liberty now to make the objection. But by the court: The borough ſeſſions had no juriſdiction to make this order of confirmation; and therefore their opinion and their order are both nugatory. The appeal ought to have been to the quarter ſeſſions of the county. As no ſuch appeal has ever been made, the original order ſtands good as unappealed from. And accordingly, the original order was confirmed. *Burrow's Settl. Caſ.* 592.

Notice of appeal. 2. *No appeal from any order of removal ſhall be proceeded upon, unleſs reaſonable notice be given by the churchwardens or over-*

overſeers of the pariſh or place appealing, unto the churchwardens or overſeers of the pariſh or place from which the removal ſhall be; the reaſonableneſs of which notice ſhall be determined by the juſtices at the quarter ſeſſions to which the appeal is made; and if it ſhall appear to them, that reaſonable time of notice was not given, then they ſhall adjourn the appeal to the next quarter ſeſſions, and then and there finally determine the ſame. 9 G. c. 7. ſ. 8.

Reaſonable notice] It is not expreſſed in the act, that this notice ſhall be in writing; but the court will better judge of the reaſonableneſs of it, if it ſhall be in writing: And it may be thus:

TO *the churchwardens and overſeers of the poor of the pariſh of* —— *in the county of* ——.

This is to give notice to you and every of you, that we the churchwardens and overſeers of the poor of the pariſh of —— *in the county of* —— *do intend at the next quarter ſeſſions of the peace to be holden for the ſaid county of* —— *to commence and proſecute an appeal againſt an order of* J. P. *and* K. P. *eſquires, two of his majeſty's juſtices of the peace of the ſaid county of* —— *for and concerning the removal of* —— *to our ſaid pariſh of* ——. *Witneſs our hands this* —— *day of* ——.

A. B. } *Churchwardens.*
C. D. }

E. F. } *Overſeers of the*
G. H. } *poor.*

3. *H.* 12 *An. Malendine* and *Hunſdan.* Two juſtices by an order ſend ſome poor perſons to *Hunſdan.* Two juſtices there by an order ſend them back again. By the court: They ought to have appealed, and not ſent them back; and held the order of the firſt two juſtices to be good, becauſe there was no appeal againſt it. *Fol.* 273. Order not appealed againſt, is final.

T. 12 *W. Chalbury* and *Chipping Farringdon.* A perſon was removed by order of two juſtices from a pariſh in *Warwickſhire* to *Chalbury* in *Oxfordſhire*, from thence by order of two juſtices to *Chipping Farringdon* in *Berkſhire:* It was objected, That *Chalbury* ought to have appealed, and got the order upon them diſcharged. Which *Holt* Ch. J. agreed: For ſending the man to another place, is falſifying the firſt order, which cannot be done, but by appeal; for the order of two juſtices is a determination of the right againſt all perſons, till it be reverſed: *Chalbury* ſhould

ſhould have appealed from the *Warwickſhire* order, and got that ſet aſide, and ſent the man back thither; and the juſtices there ſhould have ſent him to *Chipping Farringdon*. Therefore the latter order was naught. 2 *Salk.* 488.

E. 5 *G.* 2. *K.* and *Northfeatherton*. Two juſtices made an order, by which they removed a man, his wife and 4 children, naming them, to *Featherton*; and there was no appeal. Afterwards *Featherton* finds out that this woman was not the wife, for that the man, though married to her, was married before to another woman, and conſequently the ſecond marriage totally void. And they remove the woman by her maiden name to *Horſington*, and the four children thither alſo as baſtards. *Horſington* appeals; and the ſeſſions upon hearing the matter ſtate the caſe ſpecially, that this woman and the 4 children were the ſame with the woman and children removed by the firſt order, and gave judgment that the firſt order was concluſive, and thereupon quaſhed the ſaid ſecond order. And by the court: They have ſlipped their opportunity, and the firſt order not appealed againſt is concluſive. 1 *Seſſ. C.* 154.

M. 16 *G.* 2. *Nympsfield* and *Woodcheſter*. In 1731, a man and his wife were removed from *Nympsfield* to *Woodcheſter*, and there was no appeal. They had afterwards returned to *Nympsfield*, and had there three children, who were now ſent from *Nympsfield* to *Woodcheſter* together with the father. And upon an appeal as to the children, it was offered to give in evidence, that the man had a former wife, and conſequently the children born at *Nympsfield* were as baſtards ſettled there. The ſeſſions refuſed to let *Woodcheſter* go into this evidence, being of opinion, that *Woodcheſter* was concluded by the firſt order unappealed from, and that it made no difference that the children were born afterwards. The court, on debate, confirmed both orders: For the marriage being eſtabliſhed by the firſt order, the ſettlement of the children (which is derivative) follows of courſe; and can no way be impeached, but by entring into the merits of the firſt order, which hath been acquieſced in. And nothing is more eſtabliſhed, than that an order unappealed from is concluſive. *Str.* 1172. *Bur. Settl. Caſ.* 191.

T. 21 & 22 *G.* 2. *Sutton St. Nicholas* and *Leverington*. *John Buntin*, the pauper, was removed from *Sutton St. Mary*'s to *Leverington*. *Leverington* did not appeal. And yet the ſeſſions confirmed this original order, though unappealed from. Four months after the firſt order, a ſecond original order was made, to remove the pauper from *Leverington* to *Sutton St. Nicholas*. Which ſecond original

order was confirmed at the ſeſſions upon appeal. By the court: The ſecond original order, and the order of ſeſſions confirming it, were quaſhed; and the firſt original order was confirmed. For *Leverington* was bound by the firſt original order unappealed from, unleſs ſome ſubſequent ſettlement appears. And four months is not a ſufficient diſtance of time, whereupon to ground a preſumption of having acquired a new ſettlement. And the order of ſeſſions, confirming the firſt original order, was quaſhed, as being a voluntary and extrajudicial act of the ſeſſions, to confirm an order which was not complained of. —— And the like was done in the caſe of *Godalming* and *St. Michael*'s in *Wincheſter*, in the 13 *G.* 2. The order of ſeſſions, which confirmed the firſt original order, was quaſhed, becauſe it was not made upon appeal. For which reaſon, it was agreed by the court and counſel to be void. *Burrow's Settl. Caſ.* 276.

H. 6 *G.* 3. *Silcheſter* and *Enborn*. Two juſtices remove *George Wiſe* and *Jane* his wife from *Newbury* to *Enborn*, and their order was not appealed againſt. Afterwards, the pariſh of *Enborn*, finding that *Jane* was not the wife of *George Wiſe*, two juſtices remove her, by the name of *Jane Moor* ſingle woman, from *Enborn* to *Silcheſter*. *Silcheſter* appeals. And on hearing the appeal, it was proved, that the ſaid *Jane* never was married to the ſaid *George Wiſe*. And therefore the ſeſſions affirmed this order of the juſtices. But by the court: The ſeſſions order muſt be quaſhed. They ſaid, that whatever the hardſhip might be in this particular caſe, or how doubtful ſoever this queſtion might be if it were *res integra*; yet its being fully ſettled, was a reaſon for them not to depart from it now: For that *ſtare deciſis* was always a good rule; and never more ſo, than in caſes of ſettlements of paupers, where it would make the utmoſt confuſion if they ſhould overturn ſettled determinations, which the juſtices all over *England* had been uſed to look upon as the rules of their conduct in ſimilar caſes. If ſhe was not his wife, it might have been controverted. But, as they have neglected to appeal, when they had a proper opportunity to ſhew it, they are eſtopped to ſay ſo now. *Burrow's Settl. Caſ.* 551.

H. 10 *G.* 3. *Llanrhydd* and *Denbigh*. Two juſtices (Mr. *Middleton* and Mr. *Jones*) made an order of removal, in *May* 1768, from *Llanrhydd* to *Ruthin*, and the paupers were delivered to the officers of *Ruthin*; who maintained them for a while; and for ſome time after, they were maintained at the joint expence of both pariſhes. And

notice of appeal againſt the ſaid order being ſerved on the officers of *Llanrhydd*, by the officers of *Ruthin*, on the morning of the quarter ſeſſions, previous to the filing of the ſaid appeal, the officers of *Llanrhydd* conſented to take the paupers back to their cuſtody, without giving the pariſhioners of *Ruthin* the trouble of appealing. Afterwards, in *January* 1769, two juſtices (Mr. *Yale* and Mr *Price)* removed the ſame paupers from *Llanrhydd* to *Denbigh*. And upon appeal, their ſettlement was found to be at *Denbigh*. But it appearing in evidence on the behalf of the pariſh of *Denbigh*, that the former order made by Mr. *Middleton* and Mr. *Jones* for removing them to *Ruthin* had not been appealed againſt, the court were of opinion, that the ſaid order of removal from *Llanrhydd* to *Denbigh* ought to be quaſhed, and was quaſhed accordingly.—— It was moved to quaſh the order of ſeſſions; and urged, that though the principle upon which they grounded their opinion is in general right, namely, that an order of removal ſubmitted to and not appealed from is concluſive upon the non-appealing pariſh, as againſt all the world; yet this general rule is to be underſtood to relate only to a ſubſiſting order, but not to a deſerted one: and therefore the ſeſſions have miſtaken in applying this general principle to the particular caſe of the preſent order (made by Mr. *Middleton* and Mr. *Jones)* for removing the paupers from *Llanrhydd* to *Ruthin*; which, being found to be a wrong one, was by conſent of both parties concerned in it, abandoned and deſerted, and the paupers taken back again by the pariſh in whoſe favour it was made; and was conſequently at an end, and muſt be conſidered as if it never had exiſted.——On the other hand it was inſiſted, that it was not in the power of private perſons to put an end to the order for removing theſe paupers to *Ruthin*, whilſt an appeal was thus going on againſt it. The order has removed them to *Ruthin*; and *Ruthin* has not appealed. Conſequently *Ruthin* is concluded, as againſt all other pariſhes, to diſpute their belonging to *Ruthin*.——By lord *Mansfield*: That order was made in favour of *Llanrhydd*; and *Llanrhydd* gave it up, and conſented to take the paupers back, without giving *Ruthin* the trouble of appealing againſt it. May not a party give up a judgment intended for his own benefit?——And the order of ſeſſions was quaſhed; and the order for removing the paupers from *Llanrhydd* to *Denbigh* affirmed. *Burrow's Settl. Caſ.* 658.

Seſſions to proceed upon the merits.

4. By the aforeſaid ſtatute of the 13 & 14 *C.* 2. it is expreſſed, that the juſtices upon the appeal, ſhall do to the parties juſtice *according to the merits of their cauſe*.

And

And by the 5 *G.* 2. *c.* 19. *On all appeals to the ſeſſions againſt the judgments or orders of any juſtices of the peace, the juſtices there ſhall cauſe defects of form to be rectified and amended, without any coſt to the party, and after ſuch amendment ſhall proceed to hear the truth and merits of the cauſe.* ſ. 2.

Court equally divided on the appeal.

5. *T.* 8 & 9 *G.* 2. *K.* and the juſtices of *Weſtmorland.* Order of two juſtices of the borough, for removing a poor family. Appeal to the ſeſſions of the county, at which only four juſtices were preſent, who were equally divided; ſo no determination was made, nor the appeal adjourned. A *mandamus* was directed to all the juſtices of the county in general, to proceed on the appeal. It was returned, that at ſuch a ſeſſions an appeal was lodged, and that four juſtices only attended, two whereof were intereſted in the queſtion, the other two were divided in opinion. It was agreed on all hands that this return was very odd, and not to be ſupported. Sir *Thomas Abney* objected, that the writ of *mandamus* was bad, and ought to be quaſhed, for that it doth not appear, that the appeal was before them; and that, for ought appears, the *mandamus* requires the juſtices to do an impoſſible thing, *viz.* to proceed on an appeal not before them, ſince the appeal being lodged at a former ſeſſions, was not continued over to the ſubſequent ſeſſions, and therefore was by law gone. Mr. *Robinſon* on the other ſide ſaid, that it was not uſual in ſuch caſes to return the continuances; but that if in fact there was no ſuch continuance, the fault was in the juſtices, who ought to have adjourned the appeal, till by the coming of more juſtices, the matter might have been determined. By lord *Hardwicke* Ch. J. the queſtion is, Whether there is a poſſibility of the juſtices proceeding in this appeal? He thought, if there was not, as there would be a failure of juſtice in this reſpect, an information ought to go againſt the juſtices who were at the ſeſſions. He ordered the caſe to ſtand over, and recommended it to Sir *Thomas Abney* to adviſe his clients to proceed on the appeal, or return the continuances; and ſeemed at length inclined, if they did not comply, to grant a peremptory *mandamus*. 2 Seſſ. C. 193. But the pauper in the mean time running away, nothing further was done.

The juſtices may alter their order during the ſame ſeſſions.

6. *M.* 3 *An. St. Andrew's* and *St. Clement's Danes.* The ſeſſions made an order, on an appeal from an order of removal, and afterwards the ſame ſeſſions vacated it by a ſubſequent order; and a *certiorari* being brought, both orders of ſeſſions were returned thereon. By *Holt* Ch. J. The ſeſſions is all as one day, and the juſtices may alter their judgment at any time, whilſt it continues; but they

ſhould not have returned the vacated order, but only the latter; for the effect of the court's ſetting aſide the firſt order is, that it ceaſeth to be an order, and conſequently ought not to be returned as an order vacated by another order, but it ſhould have been annulled and made nothing. 2 *Salk.* 494, 606.

Coſts on the appeal.

7. *And for the more effectual preventing of vexatious removals and frivolous appeals the juſtices in ſeſſions upon any appeal concerning the ſettlement of any poor perſon, or upon any proof before them there to be made, of notice of any ſuch appeal to have been given by the proper officers to the churchwardens or overſeers of any pariſh or place (though they did not afterwards proſecute ſuch appeal), ſhall at the ſame ſeſſions order to the party in whoſe behalf ſuch appeal ſhall be determined, or to whom ſuch notice did appear to have been given, ſuch coſts and charges in the law, as by the ſaid juſtices in their diſcretion ſhall be thought moſt reaſonable and juſt; to be paid by the churchwardens, overſeers, or any other perſon, againſt whom ſuch appeal ſhall be determined, or by the perſon that did give ſuch notice; and if the perſon ordered to pay ſuch coſts, ſhall live out of the juriſdiction of the ſaid court, any juſtice where ſuch perſon ſhall inhabit, ſhall on requeſt to him made, and a true copy of the order for the payment of ſuch coſts produced, and proved by ſome credible witneſs on oath, by his warrant cauſe the ſame to be levied by diſtreſs; and if no ſuch diſtreſs can be had, ſhall commit ſuch perſon to the common gaol, there to remain by the ſpace of* 20 *days.* 8 & 9 W. c. 30. ſ. 3.

M. 5 *G.* 2. *K.* and the juſtices of the county of *Nottingham.* A *mandamus* was granted for the juſtices to give coſts to the party in whoſe favour the appeal had been determined; yet upon their return of it, the court held it reaſonable for them to have the power of judging whether coſts ſhall be allowed or not, and thereupon quaſhed the writ of *mandamus.* *Nelſ. Juſtice.* Tit. *Poor.*

E. 16 *G.* 2. *Stansfield* and *Spotland.* The ſeſſions adjourned the appeal to the next quarter ſeſſions, and ordered four guineas coſts to the appellants: Which order was quaſhed as to the coſts; for the ſeſſions cannot give coſts on a mere adjournment of the appeal, without hearing it. *Burrow's Settl. Caſ.* 205.

Maintenance to be reimburſed.

8. *For the preventing of vexatious removals, if the juſtices ſhall at their quarter ſeſſions, upon an appeal before them there had, concerning the ſettlement of any poor perſon, determine in favour of the appellant, that ſuch poor perſon was unduly removed, they ſhall, at the ſame quarter ſeſſions, order and award to ſuch appellant, ſo much money, as ſhall appear to the ſaid juſtices*

juſtices to have been reaſonably paid by the pariſh or other place on whoſe behalf ſuch appeal was made, towards the relief of ſuch poor perſon, between the time of ſuch undue removal, and the determination of ſuch appeal; the ſaid money ſo awarded, to be recovered in the ſame manner as coſts and charges upon an appeal are to be recovered by the ſtatute of the 8 & 9 *W.* 9 G. c. 7. ſ. 9.

E. 3 *G.* 2. *St. Mary's Nottingham* and *Kirklington.* Motion for a *mandamus* to the juſtices of the town and county of *Nottingham*, commanding them to allow the pariſh of *Kirklington* the expence and charges their officers had been put to, in keeping a poor perſon from the time of his removal, till the order was diſcharged by the ſeſſions upon appeal. And a *mandamus* was granted. 2 *Seſſ. C.* 67.

M. 16 *G.* 2. *Great Chart* and *Kennington.* The order of the two juſtices was quaſhed by the ſeſſions for inſufficiency; and the ſeſſions thereupon order, that the coſts of maintaining the pauper, ſince the time of his removal, ſhall abide the event of the cauſe, in caſe the ſaid pariſh of *Great Chart* ſhall think proper by another order to remove the pauper to the ſaid pariſh of *Kennington.* Which order, as to the coſts, was quaſhed by the court of king's bench; becauſe the ſeſſions muſt either give or not give coſts at the time when they make their order. *Burrow's Settl. Caſ.* 194.

Order confirmed upon the appeal, is final.

9 *M.* 13 *W.* *Mynton* and *Stony Stratford.* By *Holt* Ch. J. and the court: If on appeal to the ſeſſions an order be diſcharged, that judgment binds only between the parties: But when upon appeal an order is confirmed, that is concluſive to all perſons as well as to the parties; for it is an adjudication that this is the place of the party's laſt legal ſettlement. 2 *Salk.* 527.

M. 10 *W.* *Harrow* and *Riſelip.* A perſon comes into *Harrow*, and being likely to become chargeable, was removed to *Riſelip.* *Riſelip* appealed; and upon the appeal he was adjudged to be ſettled at *Riſelip.* Afterwards *Riſelip* diſcovered, that *Hendon* was the place of his laſt legal ſettlement, and ſent him thither; and the queſtion was, Whether after the adjudication upon the appeal, *Riſelip* was not eſtopped againſt all the world, to ſay, that *Riſelip* was not the place of his laſt legal ſettlement. By *Holt* Ch. J. *Riſelip* is eſtopped to ſay otherwiſe; for if *Riſelip* had not been the very place of his laſt legal ſettlement, the juſtices muſt have ſent him back to *Harrow*, who were firſt poſſeſſed of him, for that reaſon, becauſe they were poſſeſſed of him, and he did not belong to *Riſelip.* And now this is in effect the ſame queſtion again, namely, whether

he belongs to *Riſelip?* Which queſtion has been already determined by the juſtices on the appeal, who have adjudged that he was laſt ſettled at *Riſelip*. Now this point being determined, the appeal muſt be final and concluſive, otherwiſe there would be no end of things. 2 *Salk.* 524. 3 *Salk.* 261.

M. 6 *G. Little Bitham* and *Somerby*. A perſon is ſent by order of two juſtices to *Somerby*, as the place of his laſt legal ſettlement. *Somerby* appeals, and the order is confirmed. Soon after, without ſtating that he had gained any new ſettlement, *Somerby* ſends him to a third place. By the court: An order of reverſal is final only between the two pariſhes; but if it be confirmed, it is final as to all the world; and therefore no new ſettlement appearing, the order of removal from *Somerby* muſt be quaſhed. *Str.* 232.

Order quaſhed on the merits, concluſive only between the parties.

10. *H.* 19 *W. St. Michael's Bedingham* and *Kingſton Bowſey*. Order reverſed on the appeal is concluſive only as to the pariſh acquitted, but the firſt pariſh may remove again to any pariſh not party to the former removal. 2 *Salk.* 486.

T. 9 *G. Foſton* and *Carlton*. Two juſtices ſend a poor perſon from *Foſton* to *Carlton*. On appeal the order is quaſhed; and at three months end, two juſtices, without ſhewing any new ſettlement ſince the laſt order, make a new order to remove him from *Foſton* to *Carlton* a ſecond time. But by the court: The laſt order muſt be quaſhed: The caſe of *Barrow* and *Ingolſby*, *E.* 11 *An.* was at the diſtance of nine months, but the court quaſhed it, becauſe there could be no inconvenience in putting them to ſhew a new ſettlement. *Str.* 567.

E. 29 *G.* 2. *Bradenham* and *Thame*. Two juſtices by order of removal, dated *December* 30, 1754, ſend *John Saunders* and *Sarah* his wife and four children from *Thame* to *Bradenham*, as the place of their laſt legal ſettlement. *Bradenham* appealed to the next *(Epiphany)* ſeſſions, and the order of two juſtices was diſcharged. Afterwards on *March* 28, 1755, two juſtices make a new order, for removing *Sarah* the wife of *John Saunders* and her children from *Thame* to *Bradenham*. Upon appeal, the ſeſſions adjudge the laſt ſettlement of *Sarah Saunders* and her children to be in the pariſh of *Bradenham*, and confirm the order. On removal of theſe four orders into the court of king's bench, it was moved to quaſh theſe two laſt orders; and argued, that the order of reverſal was concluſive between the two pariſhes, that ſo there might be an end of things; and that one ſeſſions ſhall not counteract and control the acts of a former, unleſs they ſtate ſpecially, which

which they have not done here. By the court: The laſt orders muſt be quaſhed. We muſt take the appeal, on which the original order is diſcharged, to be on the merits. The matter has been determined already between theſe two pariſhes, and it muſt be concluſive. But it is ſaid, there are caſes where there may be a new removal, as ſuppoſing there had been one or two years diſtance between the two orders of removal, or a ſufficient time to gain a new ſettlement; yet the court will not intend one gained, unleſs it is ſtated in the order. And in this caſe there is no ſuch time. *Burrow's Sett. Caſ.* 394.

E. 19 *G.* 2. *Oſgathorpe* and *Diſeworth.* A perſon was removed by order of two juſtices from *Diſeworth* to *Oſgathorpe*; which order on appeal was diſcharged. He was by a ſecond order ſent from *Diſeworth* to *Oſgathorpe* as a certificate man; and upon an appeal it was ſtated, that the firſt removal was *before* he became chargeable, and the ſecond *after* he became ſo; and the ſeſſions were of opinion, that the firſt determination was not final between the pariſhes, and therefore confirmed the ſecond order of removal. It was moved to quaſh theſe two laſt orders, on the authority of thoſe caſes wherein it hath been determined, that a reverſal is final between the parties. But by the court: So it would be, if the ſpecial matter did not appear; a certificated perſon cannot be ſent back, until he is actually a charge: a removal before is premature: The conſequence of which only is, that he muſt be ſuffered to remain till he doth become chargeable, but not to make a premature removal final for ever. The laſt orders muſt be confirmed. *Str.* 1257.

H. 8 *G.* 2. *Cirenceſter* and *Coln St. Aldwin's.* The pauper was removed from *Minety* to *Coln St. Aldwin's*; and on appeal the order was reverſed. Afterwards he was removed from *Cirenceſter* to *Coln St. Aldwin's.* The former removal was on complaint of the pariſh of *Minety*; the latter on complaint of the pariſh of *Cirenceſter:* The pariſh to which the pauper was ſent on both complaints, was *Coln St. Aldwin's.* On appeal againſt this latter order, the ſeſſions quaſhed the ſame, becauſe they thought the firſt order concluſive. By the court: An order confirmed binds all the world: But when diſcharged, it is binding only between the parties concerned. For the diſcharge of the order doth not determine where the pauper is ſettled; but only, that he is not ſufficiently proved to be ſettled in the particular pariſh to which the juſtices had removed him. And lord *Hardwicke* Ch. J. ſaid, he took it to be clearly ſettled, where an order of removal is confirmed, that it is concluſive

to all the world; where it is discharged, that it is conclusive only between the two contending parishes: And this distinction is reasonable; because a third parish may be able to give better evidence than the other could. And this latter order of sessions was quashed. *Burrow's Sett. Cas.* 17.

E. 30 *G.* 2. *Bentley* and *Baxterly*. The pauper was first removed from *Baxterly* to *Stourbridge*, which order, on appeal, was discharged. Then *Baxterly* removed to *Bentley*, and *Bentley*, upon appeal, offered to give evidence, that the pauper had gained a settlement at *Stourbridge*, subsequent to the settlement which they acknowledged he had gained in *Bentley*: The sessions refused to hear this evidence, because the settlement set up in *Stourbridge* was anterior to the first appeal made by *Stourbridge*, and confirmed the order of removal to *Bentley*.—By lord *Mansfield* Ch. J. and the court: An order confirmed concludes all the world. It is a suit instituted and determined by a court having proper jurisdiction, between all proper parties. For the parishes and the pauper were the only proper parties. It is establishing one certain fact, which when ascertained regards all the world, and is not to be considered in the light of a *res inter alios acta*. So the finding that such a one was the father of such a child, or the fact of a marriage, or that a person is executor, by suit properly instituted in the spiritual court; in all these cases, when the fact is once established by proper judges, and between proper parties, it is a truth which regards the whole world. But an order discharged, is only a kind of negative finding, that such a settlement is not the last legal settlement. But does this establish the affirmative, namely, What is so? There is all the reason in the world to let in a third parish, not party to the suit, to give what evidence they can; because it would otherwise open a door to much collusion between parishes. The sessions in substance have said no more than this; "Upon the case made out to us, the pauper "is not settled at *Stourbridge*;" but this ought not to conclude the third parish from giving what evidence they can to discharge themselves. And nothing is more common in settlement cases, than for one parish to be able to get at evidence, which another parish could not produce.—And the orders were quashed. *Burrow's Settl. Cas.* 425.

Orders quashed for form, not conclusive between the parties.

11. An order of two justices, if quashed at the sessions upon an appeal, for want of form only, is not conclusive between the two parishes. *Foley.* 276.

Superintendency of the court of king's bench.

12. It was moved for setting aside an order of sessions confirming an order of two justices upon appeal. But the court would hear nothing of the merits of the cause, the order

of

of ſeſſions being in that caſe final, unleſs there had been error in form. 1 *Ventr.* 310.

M. 9 *An. South Cadbury* and *Braddon.* On appeal to the ſeſſions, the court diſcharged the firſt order. It was moved to ſet aſide the order of diſcharge, becauſe the juſtices do not ſay, whether they diſcharge it for form, or on the merits; for if it was for form, the pariſh is not bound; but if on the merits, the pariſh in conſequence is hereby diſcharged for ever. But by the court: The juſtices are not bound to expreſs the reaſon of their judgment, any more than other courts; but the reaſon of their judgment muſt be collected from the record. Particularly,

If the ſeſſions reverſe the firſt order, and that being removed appears to be good, this court will intend it was reverſed on the merits, and affirm the order of ſeſſions.

If the ſeſſions reverſe the firſt order, and that being removed appears not to be good, we muſt intend it was reverſed for form, and affirm the order of reverſal.

But if the ſeſſions affirm the firſt order, and that appears to be good, we muſt affirm the order of ſeſſions.

But if the firſt order appears bad, and the ſeſſions affirm it, this court will reverſe it, becauſe it appears naught, 2 *Salk.* 607.

So that the caſe is this: If the ſeſſions by their order do barely affirm or quaſh the order of two juſtices, and both the ſaid orders are removed into the king's bench, the court hath nothing properly before them to judge upon, but the validity of the firſt order of the two juſtices. And if that order appears *good as to form*, and is *confirmed* by the ſeſſions, the court will intend it was confirmed upon the merits; If it is *good as to form*, and *quaſhed* by the ſeſſions, the court will intend it was quaſhed upon the merits; If it is *bad as to form*, and is *confirmed* by the ſeſſions, the court will quaſh the confirmation, becauſe it appears to be erroneous; If it is *bad as to form*, and is *quaſhed* by the ſeſſions, the court will intend it was quaſhed for form.

But if the ſeſſions, by their order, do not barely affirm or quaſh the order of the two juſtices, but ſet forth the reaſons of their ſaid order, and ſtate the caſe ſpecially thereupon; then the court will judge upon the caſe ſo ſtated by the ſeſſions; that is to ſay, they will judge of the law as it ariſes upon thoſe facts ſtated, but not of the facts themſelves, for thoſe they will ſuppoſe to have appeared ſufficiently to the juſtices upon the evidence. And this is the method, when the juſtices are doubtful in point of law, whereby to obtain the opinion of that court, namely, in their order of ſeſſions which confirms or quaſhes the order

of

of the two juſtices, to ſtate the caſe ſpecially; and then the party which is not ſatisfied, by procuring the ſame to be removed into the king's bench by *certiorari*, may have it determined there by the judgment of that court, who will quaſh or confirm the order of ſeſſions as they ſee cauſe.

If the juſtices will not ſtate the caſe ſpecially, tho' it may be a blameable conduct in them in ſome inſtances, yet there are no means to compel them. As in the caſe of *Oulton* and *Wells*, *M.* 9 *G.* 2. Two juſtices removed three children of *Francis Ailmer* from *Wells* to *Oulton*; and the ſeſſions upon appeal confirm their order, generally, without ſtating any ſpecial caſe. The counſel for *Oulton* excepted at the ſeſſions to their refuſing to ſtate the caſe ſpecially, and delivered into court a bill of exceptions under their hands, which was read and received by the court. The ſubſtance of the exceptions was, That the ſaid children, after their father's death, went with their mother to an eſtate of her own at *Burnham Overy*, and there inhabited with her upwards of three months. Theſe exceptions were returned up together with the orders. And it was moved to quaſh the order of ſeſſions, together with the original order of two juſtices. The court were inclinable to come at this caſe if they could, as it ſeemed to be a determination againſt law. But by lord *Hardwicke* Ch. J. To what purpoſe ſhould we make a rule to ſhew cauſe why this order of ſeſſions ſhould not be quaſhed? For I do not ſee, that we can ever make ſuch a rule abſolute; becauſe this that is alledged to have been the real ſtate of the caſe, doth not appear to us to be the fact. And how can we take it for granted, that it was the real fact? To be ſure, it is a thing very much to be cenſured and diſcommended, when an inferior juriſdiction endeavours to preclude the parties from an opportunity of applying to a ſuperior. But ſtill we muſt go according to the due courſe of law. And Mr. juſtice *Page* ſaid, he never knew an inſtance, that this court could force the juſtices, againſt their will, to ſtate a ſpecial caſe. *Burrow's Settl. Caſ.* 64.

And in the caſe of *Preſton upon the hill* and *Dareſbury*, *E.* 9 *G.* 2. Two juſtices made an order for removal of the pauper from *Dareſbury* to *Preſton*. And upon appeal to the ſeſſions, they confirmed the ſaid order, generally; not caring to ſtate any ſpecial caſe in their order. A motion was made to quaſh theſe orders; which came before the court upon a bill of exceptions, containing a ſpecial ſtate of the caſe. On ſhewing cauſe, the ſingle queſtion was, Whether a bill of exceptions would lie in this caſe to the court of quarter ſeſſions. By lord *Hardwicke* Ch. J.

This

This is a caſe of great conſequence. And there may be very great inconveniencies on either ſide. It hath been much wiſhed, that a bill of exceptions would lie to the juſtices at their ſeſſions; becauſe otherwiſe it may ſometimes happen, that they may determine in an arbitrary manner, contrary to the reſolutions of the courts of law. For if the juſtices will not ſtate the facts ſpecially (tho' requeſted to do ſo) when the matter is doubtful, this is a very blameable conduct in them, and it is to be wiſhed that it might be avoided. On the other hand, there may be very great inconveniencies ariſing from the abuſe of bills of exceptions. And this matter of the ſettlement of the poor, which ought to be rendred cheap and ſpeedy, may by ſuch means be rendered dilatory, expenſive, and burthenſome. And after a full hearing of the arguments on both ſides, the court were unanimouſly of opinion, that a bill of exceptions doth not lie to the quarter ſeſſions. *Burrow's Settl. Caſ.* 77.

Where the caſe is inſufficiently ſtated, the court of king's bench frequently ſend it back to the ſeſſions to be re-ſtated; who may hear freſh evidence, or re-ſtate the ſame upon the former evidence, according to the nature and circumſtances of each caſe. In the caſe of *Sherfield* and *Bray*, *E.* 11 *G.* 3. which was on the point of hiring for a year, the ſeſſions had ſtated the evidence only, and not the fact of hiring. It was ſent back to the ſeſſions to be re-ſtated: and the majority of the juſtices there refuſed to re-examine the pauper, or to hear any further evidence; although three of the juſtices then on the bench had not been preſent at the appeal. It was moved to ſend it again to the ſeſſions, to be a ſecond time re-ſtated. And two caſes were cited; one of them was *K.* and *Page*, *M.* 1764, where the queſtion was, whether a man was occupier of tithes, or only bailiff? The ſeſſions was ordered to hear further evidence: and did ſo. The other caſe was, *K.* and *Hitcham*, *H.* 33 *G.* 2. where the ſeſſions did re-examine the fact, Whether the pauper was a ſingle or a married man, when hired?——Unto this it was anſwered, that theſe two caſes were not like the preſent caſe. In both of them it was neceſſary to hear the evidence over again: In the preſent caſe, it was not neceſſary; the matter was fully examined into before; the ſeſſions had ſtated the evidence, without drawing the concluſion; the court thought the ſeſſions ought to have drawn the concluſion, and ſent it back to them for that purpoſe only. They have now done ſo. They have ſtated a hiring for a year. And this court have now received all the informa-

tion they wanted.—By lord *Mansfield:* Whether the juſtices at the ſecond ſeſſions were or were not obliged to hear new evidence, is a queſtion that muſt depend upon the nature of the caſe. In *Page*'s caſe, new evidence was neceſſary. But in the preſent caſe, it was ſent back only to cure an informality. Here, the pauper had before given a full account of the agreement. Therefore the juſtices at this ſecond ſeſſions did very right, in not examining him over again. *Burrow's Settl. Caſ.* 682.

AFTER the determination of an appeal at the ſeſſions, if the order is reverſed, there is a difficulty ſometimes in getting the paupers back again to the place from whence they were unlawfully removed. If they will not, or are not able to return of themſelves, it ſeemeth that the place where they are cannot lawfully be rid of them but by another order of the juſtices, ſetting forth the matter ſpecially. As in the caſe of *Honiton* and *South Beverton*, *M.* 8 *W.* Two juſtices remove a man from *Honiton* in the county of *Devon*, to *South Beverton* in the county of *Somerſet*. They appeal to the ſeſſions in *Devon*, where the order is reverſed. Now two juſtices in the county of *Somerſet* may by order remove him to *Honiton* again; for it is but an execution of the order of ſeſſions, which could not otherwiſe be done, becauſe it is out of the juriſdiction of the court of ſeſſions. *Comb.* 401.

IV. Of the poor rate, and other helps towards their relief.

i. Of the poor rate.

ii. Taxing others in aid.

iii. How far parents and children are liable to maintain each other.

i. Of the poor rate.

It is curious to a contemplative perſon, to inveſtigate by what ſteps and degrees the compulſory maintenance became eſtabliſhed in this kingdom. By a ſtatute made in the 12 *R.* 2. *c.* 7. the poor were reſtrained from wandring abroad, and were required to abide in the towns where they were born, or in other places within the *hundred:* within which diſtricts they were *allowed* to beg.—By the 22 *H.* 8. *c.* 12. the juſtices were to diſtribute themſelves into

into ſeveral *diviſions*; within which diviſions reſpectively they might *licenſe* perſons to beg.——By the 27 *H.* 8. *c.* 25. the ſeveral *hundreds*, *towns corporate*, *pariſhes*, or *hamlets*, were required to *ſuſtain* the poor with ſuch charitable voluntary alms, as that none of them might of neceſſity be compelled to go openly in begging; on pain that every perſon making default ſhould forfeit 20 s a month. And the churchwardens, or other ſubſtantial inhabitants, were to make collections for them with boxes on *Sundays*, and otherwiſe by their diſcretions. And the miniſter was to take all opportunities to exhort and ſtir up the people to be liberal and bountiful.——By the 1 *Ed.* 6. *c.* 3. houſes were to be provided for them by the devotion of good people, and *materials* to ſet them on *work*: And the miniſter, after the *goſpel* every *Sunday*, was ſpecially to exhort the pariſhioners to a liberal contribution.——By the 5 & 6 *Ed.* 6. *c.* 2. the collectors of the poor, on a certain *Sunday* in every year, immediately after divine ſervice, were *to take down in writing*, what every perſon was willing to give weekly for the enſuing year; and if any ſhould be obſtinate and refuſe to give, the miniſter was gently to exhort him; if he ſtill refuſed, the miniſter was to certify ſuch refuſal to the *biſhop* of the dioceſe; and the biſhop was to ſend for him, to induce and perſuade him by charitable ways and means, and ſo according to his diſcretion *to take order for the reformation thereof.*——By the 5 *El.* *c.* 3. If he ſtood out againſt the biſhop's exhortation, the biſhop was to certify the ſame to the *juſtices* in ſeſſions, and *bind him over* to appear there: And the juſtices at the ſaid ſeſſions were again gently to move and perſuade him; and finally, if he would not be perſuaded, then they were to *aſſeſs* him what they thought reaſonable towards the relief of the poor; and in caſe of refuſal, were to commit him till paid.——By the 14 *El.* *c.* 5. power was given to the juſtices to lay a *general aſſeſſment*. And this hath continued ever ſince. For the ſtatute of the 43 *El.* *c.* 2. is only a re-enacting of former proviſions, with very little alteration; as followeth: *viz.*

1. *The churchwardens and overſeers of the poor of every pariſh, or the greater part of them, ſhall raiſe weekly or otherwiſe (by taxation of every inhabitant, parſon, vicar, and other, and of every occupier of lands, houſes, tithes impropriate, propriations of tithes, coal mines, or ſaleable underwoods in the ſaid pariſh) a convenient ſtock of flax, hemp, wool, thread, iron, and other ware and ſtuff, to ſet the poor on work; and alſo* Making a rate.

alſo competent ſums for the neceſſary relief of the lame, impotent, old, blind, and ſuch other among them being poor as are not able to work, and alſo for the putting out poor children apprentices. 43 El. c. 2. ſ. 1.

The churchwardens and overſeers] *H.* 2 *An. Tawney's* caſe. The concurrence of the inhabitants in making a rate, is not at all neceſſary; for by theſe words the churchwardens and overſeers may make one without them. L. *Raym.* 1013. 2 *Salk.* 531.

Shall raiſe] *H.* 2 *G.* 2. *K.* and *Barnſtable.* If the overſeers refuſe to make a rate, the court of king's bench will grant a *mandamus* to compel them. But the court will not grant a *mandamus* to make an *equal* rate; becauſe it is to be preſumed the overſeers will do juſtice, and if they do not, there is a proper remedy by appeal to the ſeſſions. 1 *Barnard.* 137.

In the caſe of *K.* and *Brograve*, *M.* 10 *G.* 3. It was moved to ſet aſide an order of ſeſſions confirming a rate allowed by two juſtices, whereby the occupiers of land were aſſeſſed at three fourths of the yearly value, and the occupiers of houſes at only one half, which upon the face of it appeared to be unequal. But by the court: Here is no apparent inequality, and we are not to preſume it. There may be reaſon to make a difference between lands and houſes. For there are ſeveral charges incident to houſes which do not fall upon lands, to leſſen their yearly value. *Burr. Manſf.* 2491.

Weekly or otherwiſe] In *Tawney's* caſe aforeſaid, *Tawney*, being overſeer of the poor, laid out his money in the relief of the poor, and was turned out of his office by the juſtices before the end of the year; by which means he loſt the opportunity of making a rate to reimburſe himſelf. Upon this, he applied to the court of king's bench for a *mandamus* to the churchwardens and overſeers to make a rate to reimburſe him. It was argued againſt the *mandamus*, that there can be no ſuch charge, neither by the common law nor by the ſtatute. And by *Holt* chief juſtice: We cannot order the pariſh or overſeers by a *mandamus* to make a rate to raiſe money to reimburſe an overſeer, but only to raiſe money for the relief of the poor; nor can they make a rate otherwiſe. The act of parliament is expreſsly ſo, and muſt be purſued. An overſeer is not bound to lay out money till he has it; if he does, he muſt make a new rate for the relief of the poor, and

and out of that he may retain to pay himſelf. *Tawney* ſhould have done ſo; he truſted where he needed not to have done it. He hath not purſued the means the ſtatute gave him, and we cannot relieve him. And by the whole court: The *mandamus* lies not. 2 *Salk.* 531.

E. 19 *G.* 3. *K.* and *Wavell.* On a rule to ſhew cauſe, why a rate for the relief of the poor of the pariſh of *Effingham* in the county of *Surrey*, and an order of ſeſſions confirming the rate, ſhould not be quaſhed, the ſeſſions had refuſed to ſtate a ſpecial caſe, but the counſel for the appellants being of opinion that the rate would appear to be bad from the title of it, they removed it by *certiorari*, and obtained the preſent rule. The title of the rate was as follows: "*Surrey* to wit. An aſſeſſment on all and every "the occupiers of lands and houſes in the pariſh of *Effing-*"*ham* for the neceſſary relief of the poor, and *towards* "*payment of money borrowed for repairing and rebuilding the* "*workhouſe.*" In ſupport of the rate, it was contended, That the title of the rate would undoubtedly have been good, if it had been only "An aſſeſſment for relief of the "poor," and that the acts and orders of magiſtrates (except convictions) are intitled to every intendment from the court that can ſupport them, and therefore that the court would intend the whole money to have been aſſeſſed for the firſt purpoſe expreſſed in the title (if it ſhould be thought that the other was not within the ſtatute), and would reject the additional words as ſurpluſage: That if the preſent objection was founded in law, the proper method of getting at it would have been, by an appeal from the allowance of the overſeers accounts. However, this purpoſe, of building or repairing a workhouſe was manifeſtly within the ſpirit of the ſtatute, ſince it would be in vain to provide for the ſuſtenance of the poor, without being able to furniſh them with a lodging. On the other ſide, it was ſaid to be a general rule without exception, that the pariſh officers cannot borrow money for any purpoſe whatever. The inconvenience of veſting ſuch an authority in them was manifeſt; for new inhabitants might be called upon to pay money borrowed before they became pariſhioners, and for purpoſes from which they could derive no benefit.—— Lord *Mansfield* was abſent. *Willes* juſtice: Can we reject as ſurpluſage what is a material part of the title of the rate? If we cannot, is a rate good to repay money borrowed? *Tawney*'s caſe is in point. And as to an appeal againſt the overſeers accounts, is a pariſhioner obliged to pay money, and be turned round in that manner to get it back if levied without authority? The rate cannot be ſupported. *Aſhurſt* juſtice,

juſtice, of the ſame opinion. *Buller* juſtice: This rate imports to be made for two purpoſes, and we are deſired to conſider it as only made for one. I conceive that a rate cannot be made for money borrowed, even tho' within the the year. *Tawney*'s caſe goes that length; for it is not confined to the *mandamus*. If it were otherwiſe, the inconvenience might be very great.—And the rule for quaſhing was made abſolute. *Douglas.* 111.

And by the 17 *G.* 2. *c.* 38. Where perſons ſhall come into or occupy any premiſſes, out of which any other perſon aſſeſſed ſhall be removed, or which at the time of making ſuch rate was unoccupied; every perſon ſo removing from, or coming into, or occupying the ſame, ſhall be liable to pay ſuch rate, in proportion to the time that ſuch perſon occupied the ſame reſpectively, under the like penalty of diſtreſs, as if ſuch perſon ſo removing had not removed, or the perſon coming in or occupying had been originally aſſeſſed in ſuch rate; which proportion, in caſe of diſpute, ſhall be aſcertained by two juſtices. *S.* 12.

By taxation] By this ſtatute the taxation ought to be equal; and therefore ought to be continually altered as circumſtances alter. 2 *Salk.* 526.

M. 12 *W.* *K.* and *Audley.* A rate was agreed on in 1665, by the inhabitants of *Audley*, which had been followed ever ſince till the laſt year, when a new rate was made. On appeal to the ſeſſions, the new rate was quaſhed, and the old one ordered to ſtand. By *Holt* Ch. J. The old rate, however juſt at firſt, may be unequal now, and therefore the juſtices cannot make a ſtanding rate, for lands may be improved. 2 *Salk.* 526.

H. 2 *G.* *K.* and *Clerkenwell.* An order was quaſhed, which was made to confirm a poor rate, which rate was made according to the *land-tax:* Objected, that this taxation was not equal, becauſe the perſonal eſtate in the public funds is not chargeable to the land-tax, but it is to the poor: And by the whole court this rate for that reaſon was ſet aſide. *Foley.* 12.

Of every inhabitant] *T.* 19 *G.* 2. *K.* and the churchwardens of *Weobly.* The court refuſed to grant a *mandamus*, directing to inſert particular perſons in the poor rate, upon affidavits of their ſufficiency, and being left out to prevent their having votes for parliament men; for that the remedy was by appeal, and this court never went further, than to oblige the making the rate, without meddling with the queſtion, who is to be put in or left out; of which

the parish officers are the proper judges, subject to an appeal. *Str.* 1259.

The court of king's bench, from the difficulties attending the matter in practice, have all along been averse from delivering any opinion upon the general question, Whether, or how far, *personal estate* is liable to be rated to the poor; but have determined the several cases upon their own particular circumstances, or quashed the orders for insufficiency in point of form.

H. 5 *An. Q.* and *Berkin.* Upon quashing of several orders made relating to the poor rates, the matter in difference was referred to the determination of the lord chief justice *Holt*; who having heard all the parties, and they not seeming satisfied with his opinion, they signified their consent in writing to submit this question to the opinion of the judges of the king's bench: to wit, Whether a *farmer for his stock* shall not be chargeable and taxable to the poor rate, as well as a tradesman for his *stock in trade?* And the other three judges were of opinion that a farmer for his stock is not taxable, contrary to the opinion of *Holt* chief justice. Whereupon the following rule of court was made. "Upon mature deliberation, it is considered by "the court, that a farmer is not taxable to the poor rate "for his stock; and that a tradesman is taxable for his "stock in trade." [Or, as it is expressed in the record, *Quod firmarius, anglice*, a farmer, *non erit onerabilis et taxabilis ad ratas pauperum pro peculiis, anglice*, stock; *et quod artifex, anglice*, a tradesman, *est onerabilis et taxabilis pro peculiis, anglice*, stock, *in arte, anglice*, trade.] Lord *Raym.* 1280.

E. 10 *G.* 3. *K.* and *Witney* in *Oxfordshire.* Upon an appeal against a rate for the relief of the poor of the parish of *Witney*, the cause of appeal was, that there are within the said parish many manufacturers of blankets and other traders, who employ under them many servants and apprentices: And such manufacturers and traders were not assessed in the said rate for their stocks in trade: And for that reason only, the said rate was quashed; the court of sessions conceiving itself bound to quash the rate, on account of the omission of such stock in trade in the said rate; subject however to the opinion of the court of king's bench on the following facts. It appeared there have long been many such manufacturers and traders within the said parish, who have been constantly assessed to the *land tax* for their respective stocks in trade, but none of whom have ever been charged with the payment of any rate for the

relief of the *poor* on account of ſuch *ſtocks*: That as well the ſaid manufacturers and traders, as all other occupiers of lands and houſes within the ſaid pariſh have been and conſtantly are aſſeſſed, in this and all former rates for the relief of the poor, as well as to the *land tax*, *for the lands and houſes* in their reſpective occupations.—The counſel who argued in ſupport of the order of ſeſſions cited and relied upon the caſe of *Q.* and *Barker*. But the court were not ſatisfied of the authority of this caſe. Lord *Mansfield* expreſsly called it a ſtrange caſe. They obſerved, that the opinion of three of the judges was only ſaid to be, that a farmer for his ſtock was not taxable, contrary to the opinion of *Holt* chief juſtice. But it doth not appear that a queſtion was directly put to them, Whether a tradeſman was taxable to the poor for his ſtock in trade? The court however gave no explicit opinion upon the merits of the preſent caſe, tho' they ſeemed very far from allowing that a tradeſman is rateable to the poor for his ſtock in trade. Whatever may be the future determination of that point, whenever it ſhall come regularly before the court, they held it improper and inconvenient for them to enter into the diſcuſſion of it upon the ſeſſions order as it now ſtands. It would make great confuſion, if the court were to give general opinions upon vague ſtates of caſes: They are to judge upon the caſe before them, and their judgment ought to go no further than the caſe ſtated to them goes. Whereas they have here aſked a general opinion, without any particular caſe ſtated. They aſk us this general queſtion; without ſtating, what is ſtock in trade; or, what it is that the rate has taxed; or, whether theſe people have any ſtock in trade; or, what that ſtock in trade is; nor any particular deſcription of what trade is meant.—But here, the order of ſeſſions is clearly wrong upon the face of it: becauſe they ought not to have quaſhed the whole rate, but to have added thoſe perſons and that property which was thought were illegally omitted. And the order was quaſhed. *Burr. Manſf.* 2634. *Bott.* 34.

T. 15 *G.* 3. *K.* and *Ringwood.* On ſhewing cauſe againſt quaſhing an order of ſeſſions which had quaſhed a rate for the relief of the poor of the pariſh of *Ringwood*. The ſeſſions order ſtated, that three perſons were poſſeſſed as coparceners of ſtock in the trade and buſineſs of common brewers and maltſters in the ſaid pariſh, to the value of 4000 l. For no part of which the ſaid coparceners, or any of them, were or was in the ſaid rate aſſeſſed to the relief of the poor of the ſaid pariſh. And it doth not appear to this court, that ſtock in trade hath ever before

been rated in the ſaid pariſh. Therefore this court is of opinion, and doth adjudge, that the ſaid recited rate ought to be quaſhed, and the ſame is hereby quaſhed accordingly. And this court doth hereby order a new rate to be made immediately for the relief of the poor of the ſaid pariſh, by the churchwardens and overſeers of the poor of the ſaid pariſh of *Ringwood*.——On hearing the cauſe, the court declined entering into the merits; but as to this particular caſe, lord *Mansfield* ſaid,—I have no doubt what is to be done with it, as the authority of *K.* and *Witney* is preciſely in point. I think the juſtices would not have done very wrong, if they had acquieſced in the practice which has obtained ever ſince the ſtatute of 43 *Eliz.* of not rating this ſpecies of property. The caſe of *K.* and *Witney* was determined upon this ſingle ground, that the juſtices in ſeſſions ſhould not have quaſhed the whole rate, but ſhould have amended it by inſerting the particular perſons and that property which was omitted, and which they thought rateable. So here, the juſtices at ſeſſions ſhould have amended the rate, if they thought this properly rateable; and then on attempting to do it, they would have diſcovered the wiſdom of conforming to the practice, which they expreſsly ſtate in the caſe of not rating it. If they had tried to have amended it, how would they have rated this ſtock? Are the hops, and the malt, and the boiler to be rated at ſo much for each? Or is the trader to be rated for the groſs ſum which his whole ſtock would ſell for? If the juſtices had conſidered, they would have found out the ſenſe of not rating it at all; eſpecially when it appears that mankind has, as it were, with one univerſal conſent, refrained from rating it; the difficulties attending it are too great, and ſo the juſtices would have found them. And by the court, the order of ſeſſions was quaſhed. *Cowper.* 326.

H. 17 *G.* 3. *K.* and the overſeers of *Andover*. On a rule to ſhew cauſe why an order of ſeſſions made for rating ſeveral tradeſmen for their ſtock in trade towards the relief of the poor ſhould not be quaſhed, the caſe was, The overſeers made a new rate, in which they omitted to rate tradeſmen for their ſtock which had been formerly rated in that pariſh. Upon which, the other inhabitants of the pariſh appeal to the ſeſſions. And the ſeſſions make order whereby they adjudge, " That Mr. *Joſeph Wakefield* is a " proprietor of ſtock in trade as draper in the pariſh of " *Andover* to the amount of 3001, and that the profits of " that trade is 151 a year; and that he ought to be rated " towards the relief of the poor of the ſaid pariſh in reſpect

" of ſuch ſtock and profits 71 each rate in the rate ſo ap-
" pealed againſt." And there was the like adjudication as to ſeveral other tradeſmen. And the court ordered the ſaid rate to be amended by putting into it a rate on the ſaid ſeveral tradeſmen, in reſpect of ſuch their ſtock and profits.——It was objected, that this order on the face of it was bad, inaſmuch as it did not appear, that the ſeveral perſons whoſe names were added to the rate by order of ſeſſions had notice of the appeal or litigated the queſtion at the ſeſſions. They were therefore without redreſs; for it neceſſarily precluded them from their appeal. The ſeſſions as to them made an original rate, without having given them an opportunity of defending themſelves.—— The court held this to be a fatal objection; and therefore that the order of ſeſſions ought to be quaſhed. Lord *Mansfield*, upon the general point, ſaid, It is a very different queſtion, whether perſonal eſtate is to be rated to the utmoſt extent, or not to be rated at all. It would make the poor laws very oppreſſive, if a man is to be taxed to the extent of his whole perſonal eſtate and income. In that caſe, every man who has money in the funds would be liable, lawyers for their fees, ſoldiers for their pay, and the like. But where men are occupiers of houſes, and have ſtock in trade, whether ſuch ſtock in trade may be taken into conſideration, is a very different queſtion. Some perſonal eſtate may be rateable. But it muſt be *local viſible property* within the pariſh. It would be material to ſtate what has been the cuſtom of rating. If the uſage ſhould be to take in ſtock in trade, there would be very good right to ſupport it. Let them therefore try it on the ſpecial circumſtances of the caſe. Mr. juſtice *Aſton* ſaid, That if upon the general queſtion it ſhould turn out to be the law that perſonal property is rateable, it muſt be then rated, tho' it was never rated before.——On the preſent queſtion, the rule was made abſolute, for quaſhing the order of ſeſſions. *Cowper*. 550.

T. 17 *G.* 3. *K.* and *Hill.* On ſhewing cauſe againſt a rule for quaſhing an order of ſeſſions confirming a poor rate, it appeared, that the appellant *Hill* was a clothier, and an inhabitant of the pariſh of *Bradford*, where many other tradeſmen, particularly clothiers and manufacturers of woollen goods, likewiſe lived: That the churchwardens and overſeers charged him to the poor rate in reſpect of his ſtock in the cloathing trade which he had in the ſaid pariſh. Againſt which rate he appealed, alledging that he was not liable. The ſeſſions upon the appeal adjudge him liable, and confirm the rate. In ſupport of the order of

ſeſſions, it was argued as follows: This queſtion takes a different turn from any other that has been diſcuſſed. For it is ſtated, not as a caſe of landholders aggrieved by the omiſſion of a ſet of men rateable, as they conceive, in reſpect of their perſonal property; but as a complaint by a tradeſman upon his being rated to the poor for his viſible ſtock in trade within the pariſh: And this is the ſhape in which lord *Mansfield* ſaid in the *Witney* caſe, ſuch a queſtion ought to come on: Not, as a general queſtion, Whether ſtock in trade be rateable or not? but, as a particular one made by an individual, Whether he is bound to contribute to the poor rates in reſpect of the ſtock in trade which he poſſeſſes in the pariſh of *Bradford?* The whole queſtion therefore depends upon the conſtruction of the ſtatute of 43 *Eliz.* Before the ſaid ſtatute, the directions of the ſeveral ſtatutes relating to the relief of the poor were generally, that all the *inhabitants*, according to their reſpective properties, ſhould contribute. The ſaid ſtatute of the 43 *Eliz.* makes a diſtinction, charging firſt *every inhabitant*, and then every *occupier of houſes or lands* within the pariſh. Other ſubſequent ſtatutes, as for inſtance thoſe relating to the repairs of highways from time to time, enacted that aſſeſſments ſhould be made for thoſe purpoſes upon *all and every the inhabitants* owners and occupiers of lands and tenements, and alſo of any *perſonal eſtate uſually rateable to the poor*. As to the inconvenience that may be ſuppoſed would attend the rating of perſonalty, ſtock in trade in ſome reſpects is rated to the land tax, as appears from the caſe of *Witney*. But if the law authoriſes the tax, a difficulty in the mode of levying it can be no objection. Beſides, that the tax is now actually raiſed in many places in this kingdom, in *Lynne*, *Norwich*, *Frane*, *Trowbridge*, *Warminſter*, *Bewdley*, *Blandford*, and in many pariſhes of *London*, and in particular that of *Whitechapel*. And in the ancient ſubſidies, unto which the land tax ſucceeded, perſonal eſtate was always rated. —— Lord *Mansfield* ſtopped the counſel in the argument for the defendant, by aſking, What uſage heretofore had been in this place with reſpect to rating ſtock in trade? Unto which it was anſwered, That the uſage was waived, and that the counſel at the ſeſſions had agreed to bring the general queſtion before the court. Lord *Mansfield* ſaid they had no right to do ſo; and thought it ought to be ſent back to the ſeſſions to ſtate the uſage. That the aforeſaid highway acts referred to perſonal eſtate *uſually* rateable to the poor.—Afterwards, the caſe being ſent back, and the ſeſſions returning, that it had been the uſage heretofore in the pariſh of *Bradford* to rate perſons for their ſtock in trade, the court ordered

the rate to ſtand, and the rule for quaſhing it to be diſcharged. *Cowper.* 613.

H. 7 *G.* 3. *K.* and the inhabitants of *Shalfleet.* *Sherington's* caſe. The queſtion was, Whether an officer of the ſalt office is liable to be rated in reſpect of his ſalary?—It was argued, in behalf of the officer, that he is not liable: That aſſeſſments for relief of the poor muſt be made according to the perſon's viſible ability within the town or place where he inhabits; and without having regard to any other eſtate which he hath in any other town or place: That this is a tax upon the profits of the man's daily labour.—On the other hand, it was inſiſted, that he is rateable for his ſalary within the words as well as meaning of the ſtatute, which have been always conſtrued with favour and latitude: That it is reaſonable, where perſons derive a benefit from the pariſh, that they ſhould ſubmit to the burdens of it: That if the officer becomes chargeable, the pariſh muſt maintain him: That every man is, for every ſort of perſonal property which hath a certain produce, rateable to the relief of the poor in the pariſh where he lives: That this is a fixed, certain, permanent produce, as to the value; it is no otherwiſe caſual or contingent, than in reſpect of the man's continuance in his office; if he ceaſes to be in office, he will ceaſe to be taxed: That theſe ſalaries have been thought to be fit objects of taxation to the land tax; and there is much ſtronger reaſon why they ſhould be ſo to the poor; they are expreſsly named in the land tax acts, which ſhews that they are fit objects of taxation in general.—By the court: This ſpecies of property is not mentioned in the act; nor has it any analogy to thoſe ſorts of property that are mentioned therein. The whole ſcope of the argument for the taxation is foreign to the queſtion; namely, that a man may be rated in his pariſh for his perſonal eſtate. Now a man's perſonal eſtate is only what he is worth after payment of all his debts; which cannot eaſily appear, ſo as to be rated. But that is not the queſtion here. He is here rated for this ſpecific property, as lying in the pariſh which he ought not to have been. And we are all of opinion, that this is not ſuch a ſpecies of property as can be rated to the relief of the poor, as perſonal eſtate within the pariſh. *Bur. Mansf.* 2011.

On a motion to confirm a tax laid by the juſtices on the *toll* of a corporation, *Holt* chief juſtice ſaid, That on a reference to him by both parties, he was of opinion, that the toll was not exempted, but chargeable, tho' part of it was to maintain the mayor. 3 *Keb.* 540.

M. 12 *G.*

M. 12 *G.* 3. *K.* and *Rebow.* The queſtion was, whether the *tolls of a light-houſe* were rateable to the poor. In ſupport of the rate, it was urged, that if a maſter puts a ſervant into a light-houſe, he certainly gains a ſettlement: That in the preſent caſe, the light-houſe was actually uſed as a dwelling-houſe; that the annual profit is the meaſure of the value; and if over-rated, the ſeſſions can relieve.—On the other hand, it was objected, that the houſe only is rateable, and not the tolls; that here they have rated a ſmall building of no value but as a light-houſe, and ſcarce ten yards of land, as bringing in 1400 l a year: That the toll is collected of ſhips paſſing by, not coming in: That there are about twelve ſuch light-houſes in the kingdom, and that none of them before this inſtance have ever been attempted to be rated in reſpect of the tolls thereof.——After having taken time to conſider, lord *Mansfield* delivered the reſolution of the court: We are all of opinion, that the tolls, being raiſed from veſſels from different parts all over the kingdom, are not to be conſidered as locally related to the pariſh, and as ſuch are not chargeable to the poor rate. *Loft.* 77.

E. 17 *G.* 3. *K.* and the inhabitants of *Cardington.* This caſe came before the court upon a rule to ſhew cauſe, why an order of ſeſſions quaſhing a rate for relief of the poor of the pariſh of *Cardington* ſhould not be quaſhed as to the aſſeſſment upon *Aſhley Palmer* eſquire. The caſe ſpecially ſtated was, that *Aſhley Palmer* eſquire is ſeiſed in fee of the right of navigation of that part of the river *Ouſe*, which lies between *Erith* in the county of *Huntingdon*, and the town of *Bedford*, and of all the tolls ariſing for the carriage of coals and other goods upon that part of the navigation: That he hath power to erect ſluices and ſtaunches for the better keeping up the water and carrying on the ſaid navigation, and that tolls are paid for paſſing through every ſluice, and in a different rate for different ſluices: That one ſluice is erected in the pariſh of *Cardington*, at which the toll is 3 d a chaldron or load weight: That Mr. *Palmer* doth not reſide in the pariſh of *Cardington*, nor hath he any perſon reſident at that ſluice to receive the tolls; but that the tolls for that ſluice are received at *Barford* or *Eaton:* That neither Mr. *Palmer*, nor any other of the former proprietors of this navigation, were aſſeſſed to the poor rates for their ſluices or for the tolls or profits: But they have for many years been aſſeſſed to the land tax.—Againſt the rule, it was argued, that tolls and other yearly profits being ſpecially charged in the land tax acts, and not in the act of 43 *Eliz.* is a proof that the parliament did

not intend this ſpecies of property to be charged to the poor. Beſides, as Mr. *Palmer* does not reſide in the pariſh, nor is even the toll received in the pariſh; if aſſeſſable at all, it muſt be aſſeſſed where received, and not in the pariſh of *Cardington*. And to this purpoſe was cited the caſe of *Rebow* as directly in point. If any diſtinction could be made between the two caſes, it is, that the preſent is rather ſtronger than that; becauſe there two perſons were conſtantly reſident in the light-houſe, the tolls of which were the object of the rate. But here, neither Mr. *Palmer*, nor any body who could repreſent him, reſided in this pariſh.—In ſupport of the rule, it was contended, that this ſpecies of property, though not expreſsly within the words, was clearly within the meaning of the ſtatute of 43 *Eliz.* That there could be no difference between theſe tolls and thoſe of any other deſcription; as the tolls of a market, or the like, which are clearly aſſeſſable to the poor. In the caſe of *Rebow*, inquiry was directed to be made as to the tolls of bridges; when it appeared, that *Fulham* bridge tolls are taxed at the rate of 500 l a year? Why not aſſeſs theſe tolls as well as them? As to the objection of their not being received within the pariſh, they might be received there, if Mr. *Palmer* choſe; they are not neceſſarily payable elſewhere. But the material thing is, that they ariſe within the pariſh. The conſideration for which they are paid, is the paſſing thro' the ſluice *within* the pariſh; and if a boat went no farther, the toll was to be equally payable. It is therefore compleatly due within the pariſh. The ground of the deciſion in *Rebow*'s caſe was, that the veſſels did not come within the pariſh, therefore the tolls were not due there; but here, they ariſe and are due within the pariſh.——The court ordered the caſe to ſtand over, that inquiry might be made as to the cuſtom of rating this deſcription of property in other places. In anſwer to the inquiries, it was returned on the part of the plaintiff, that out of 14 ſluices, being the whole number erected upon this navigation, one only was rated to the poor; that the river *Ivil* near *Bury*, the *Northampton* river, *Larke*, *Owſe*, and *Stower* were none of them taxed. On behalf of the defendant it was ſtated, that the tolls at *Marlow*, *Oxford*, *Reading*, and ſeveral others on the river *Thames*, were all rated to the poor.—Upon the whole, the court was of opinion, that theſe tolls are rateable; and therefore directed the rule for quaſhing the order of ſeſſions to be made abſolute, and affirmed the rate. *Cowper*. 572.

T. 17 *G.* 3. *K.* and *Miller.* Caſe ſpecially ſtated. Mrs. *Skillicome* of the pariſhof *Cheltenham* in the county of *Glouceſter* demiſed to *William Miller* eſquire of the ſame pariſh, certain lands containing about four acres, with buildings thereon, and a certain well of mineral water thereout ariſing, called the *Cheltenham* Spa, at the yearly rent of 100 l: The lands and buildings thereon, independent of the well, are of the annual value of about 20 l. And the overſeers rated him to the poor as for an intire eſtate of 100 l a year. It was argued, that the mineral water is not an object of taxation. And the uſage with reſpect to other places in different parts of the kingdom was alledged, as at *Matlock*, *Buxton*, and *Scarborough*. None of theſe were ever rated, and the reaſon is, becauſe they are not a ſubject of taxation within the words or meaning of the ſtatute of 43 *Eliz.*—By lord *Mansfield:* Nothing can be plainer than the preſent caſe. This is not a rate upon the profits of the well, but upon four acres of land let to the defendant at 100 l a year; and the value ariſes, partly from the buildings, and partly from the ſpring that produces the mineral water. Therefore, the profits of the ſpring are part of the produce of the land. In *Worceſterſhire* and *Cheſhire*, where there are ſalt ſprings, the rent of the land is increaſed conſiderably on that account. So here, the conſideration of the well increaſes the rent. It is part of the produce of the land; and therefore, as ſuch, ought to be rated. *Cowper.* 619.

The overſeer of *Stoke Nayland* in *Suffolk* made a rate, in which he charged the *quit rents* of ſeveral manors within the pariſh; which rate the juſtices refuſed to ſign, becauſe the quit rents ought not to be taxed: Whereupon the overſeer, on application to the king's bench, obtained a rule to inforce the juſtices to ſign it; which was ſtrongly oppoſed, becauſe no inſtance could be given that ever the quit rents were charged: but the court ordered the rate to be ſigned, and a warrant to diſtrain; ſo that if any perſon thought himſelf aggrieved, he might bring an action upon the diſtreſs, and the matter in law be brought in queſtion. *Carth.* 14 *M.* 3 *Ja.* 2.

In another like caſe, *Eyre* J. ſaid, that a quit rent is not taxable to the poor, for the tax ought to be laid on the occupier: But *Holt* Ch. J. ſaid, it was otherwiſe ruled in the caſe of one *Williams* of *Suffolk*. Comb. 264. *T.* 6 *W.*

Finally, in the caſe of *K.* and *Vandewall*, *E.* 33 *G.* 2. this point came fully to be conſidered. *Samuel Vandewall* eſquire, lord of the manor of *Aldenham*, was charged to the poor

poor rate, for the manor itſelf (excluſive of the demeſne lands), conſiſting, as was ſtated, of quit rents, fines for renewal of copyholds, and other caſual fruits and profits, the whole amounting to about 130l a year; the ſaid *Samuel Vandewall* occupying nothing elſe in the pariſh. On appeal to the ſeſſions, the juſtices confirmed the rate, ſetting out this ſpecial caſe. The order being removed by *certiorari*, it was objected, that the lord was not an inhabitant, nor were the rents and profits of the manor rateable under the ſtatute, being neither lands, houſes, tithes, nor any of the things recounted in the ſtatute. — It was argued in ſupport of the rate, that theſe words were only put as examples; that the ſtatute hath not determined what ſpecies of property is or is not taxable, but that has been fixed by the reſolutions of the courts; that perſonal eſtate is taxable, tho' not mentioned in the ſtatute; that the lord is an inhabitant in this reſpect, or if not, yet the ſtatute mentions, "inhabitants, parſons, vicars, *and others*;" and the authorities were cited, where it is ſaid to have been determined, that tradeſmen are rateable for their ſtock in trade; that a toll of a market is taxable; that ground rents are taxable, and alſo quit rents. — On the other hand, it was obſerved, that quit rents iſſue out of lands, which have already been fully rated in the hands of the occupier, and therefore are not liable to be rated again; that caſual profits are of the ſame nature, they are part of the profits of the land, which hath already been fully rated; that it is impoſſible to be law, that ground rents are rateable, they are of the nature of all other reſerved rents on leaſes for years; that tolls (if rateable) are only ſo, becauſe not rated in any other ſhape; that few mines are ever rated, though expreſsly named in the ſtatute, becauſe their profits are caſual; that if ground rents are rateable, this will equally extend to all other rents whatever, which is a matter of the utmoſt importance.—By lord *Mansfield:* The authorities that have been cited are only ſcraps and ſtrange ſtuff. And he delivered the reſolution of the court, that the rents and caſual profits of the manor are not rateable to the poor; which he ſaid was ſo clear, that there was no need to enter into reaſonings about it: And ſo far as appeared to the court, ſuch rents and profits had never been attempted to be rated before; and there is no colour for the attempt now, after more than a century and an half ſince the making of the act upon which it is grounded. *Bur. Mansf.* 991. *Black. Rep.* 212.

Of

Of every occupier] The farmer or occupier ſhall pay this tax, and not the landlord, who is never to be taxed for his rent; for then the landlord would pay twice. *Dalt.* 165.

And the reaſon why the occupier is to be ſo charged is, that the poor rate is not a charge upon the land, but upon the occupier in reſpect of the land. *Fitz-Gib.* 297. *Caſe* and *Stephens.*

M. 11 *G. Theed* and *Starkey.* The leſſor covenants with the leſſee, to pay all taxes *on the lands* demiſed. The leſſee brought an action of covenant, and aſſigned for breach the not paying of the rates to church and poor. Upon demurrer it was objected, that thoſe rates are perſonal charges, and not on the land: And for that reaſon the defendant had judgment. 8 *Mod.* 314.

Occupier of *lands, houſes*] *E.* 1 *An.* By *Holt* Ch. J. Hoſpital lands are chargeable to the poor, as well as others; for no man, by appropriating his lands to an hoſpital, can diſcharge or exempt them from taxes to which they were ſubject before, and throw a greater burden upon his neighbours. 2 *Salk.* 527.

But with reſpect to the hoſpital itſelf, it was determined, in the caſe of *St. Luke*'s hoſpital for lunatics, *M.* 1 *G.* 3. that ſuch hoſpitals are exempted, excepting only thoſe parts of them which are inhabited by the officers belonging to the hoſpital, as the chaplain, phyſician, and the like, in *Chelſea* hoſpital; and theſe apartments are to be rated as ſingle tenements, of which the ſaid officers are the occupiers. The reaſon why the apartments of the ſick or mad perſons in the preſent caſe are not to be rated is, that there are no perſons who can be ſaid to be the *occupiers* of them. For it would be abſurd to call the poor objects ſo with reſpect to this purpoſe; and the leſſees of the hoſpital in truſt for the charitable purpoſes to which it is applied, cannot with any propriety be conſidered as the occupiers of it; nor, laſtly, can the ſervants of the hoſpital, who attend there for their livelihood: And no other perſons (ſaid lord *Mansfield*) can with any ſhadow of reaſon be conſidered as the occupiers thereof. *Bur. Mansf.* 1053. *Black. Rep.* 249.

T. 9 *G.* 3. *K.* and the Inhabitants of *St. Bartholemew's the Leſs.* The mayor and commonalty of the city of *London*, governors of *St. Bartholemew*'s hoſpital, pulled down ſeveral old houſes belonging to the hoſpital, the tenants whereof had been uſually aſſeſſed to the poor rate, and on the ſite of the ſaid ancient houſes erected ſeveral piles of building for the uſe of the ſaid hoſpital, and incloſed an area within the

the ſame for the benefit of the patients. The pariſh officers aſſeſſed the mayor and commonalty to the poor rate in reſpect of the premiſſes. The queſtion was, Whether the governors of the hoſpital are rateable to the poor in reſpect of the buildings and area above mentioned?—By lord *Mansfield:* The poor rate muſt be charged upon the occupiers. In the caſe of *St. Luke*'s hoſpital, and of *Chelſea* hoſpital, the officers were rated as *occupiers*. The corporation are not in fact occupiers: The poor are occupiers, but they are not rateable: The general rule muſt be followed: That rule is, That you muſt find an *occupier* to be rated. The poor people cannot be rated at all. The ſervants cannot be rated as occupiers, nor can the corporation be charged as occupiers. *Burr. Manſf.* 2435.

T. 14 *G.* 3. *K.* and *Gardner.* The maſter and fellows of *Catharine Hall* in *Cambridge* purchaſed ſeveral houſes in the pariſh of *St. Botolph*, and pulled them down, and amongſt other particulars converted part of the ground on which the ſaid houſes had ſtood into an area, and planted the ſame with trees for ornament. The pariſh aſſeſſed them for the ſame to the poor rate. The queſtion was, Whether the maſter and fellows, being a body corporate, are liable to be rated? —— In ſupport of the rate it was argued, that corporations having lands may be rated, and are to be conſidered as *inhabitants* in reſpect of ſuch lands. Lord *Coke* (2 *Inſt.* 703.) in his expoſition of the ſtatute of 22 *H.* 8. *c.* 5. for the repair of *bridges*, commenting upon the word *inhabitants*, with reſpect to what perſons are included under that deſcription, ſays, every corporation and body politic having lands which they poſſeſs and have in their own hands, are *inhabitants* within the purview of the ſaid ſtatute. And in the caſe of *Thursfield* and *Jones* (1 *Jones.* 187.) the court held, that the maſter and wardens of the company of wax-chandlers were chargeable to the repairs of the *church* in reſpect of their corporate lands. And no reaſon can be given why they are not equally ſo under the ſtatute of 43 *Eliz.* for the relief of the *poor.*—— Againſt the rate, it was inſiſted, that corporations are not rateable, becauſe the remedy of impriſonment, upon failure of diſtreſs, is impoſſible; and the remedy by diſtreſs alone is inadequate. The caſe of *St. Luke*'s hoſpital ſhews, that nothing can be rated which doth not yield a profit. The advantages gained by this area are juſt like thoſe which are gained by *St. Bartholomew*'s hoſpital by their area. But with regard to the *profit* accruing from it, the ſubject matter excludes the poſſibility of rating it: for nothing is more apparent, than that where property is the ſubject of a rate,

rate, the value of it must be certain, because the measure of the profit is the measure of the rate. But here, nothing is or can be received, and therefore there can be nothing to pay.——By lord *Mansfield:* The question is, Whether in law a corporation may be considered as *occupiers* or *inhabitants?* By the statute of *Eliz.* all lands and all real property are rateable to the poor; and must have *occupiers* and *inhabitants*, in respect of taxation: therefore if a man has no tenant, and is seised of lands in fee, he is said to occupy them himself, or by his bailiff or agent. No case hath been instanced to shew, that a corporation is exempted from this tax; and I can find no authority in law which says they cannot be rated. And the authorities which have been cited tend to prove, that corporations are rateable both as *inhabitants* and as *occupiers*; if they are liable in respect of the repairs of *bridges* and of *churches*, they are equally so by the statute of *Elizabeth* in respect of the *poor*. As to the other objection, that this area yields no profit, and therefore ought not to be rated, the answer is, that the value is in the judgment of the assessors; and if the college think themselves over-rated, they have their remedy by appeal.——Mr. justice *Aston:* I have no idea but that the corporation may be occupiers; and as to the remedy of levying a duty upon a corporation, the books all agree that it can be levied, tho' they differ in the mode. *Sheppard* in his treatise upon corporations says, "If a sum "of money be to be levied upon a corporation, it may be "levied upon the mayor or chief magistrate, or upon any "person being a member of the corporation." But in the case of the city of *London* concerning the duty of *water-bailage* (1 *Ventr.* 351.) is different, and is thus, "Note, it was said that for a duty or charge upon a cor- "poration, every particular member thereof is not liable; "but process ought to go in their public capacity." And this is the right law. In the case of *Thursfield* and *Jones* (*Skin.* 27.) the corporation were cited, not by their proper names, but in their politic capacity: and the court said, "If the company had neither land nor goods, there "was no way to make them appear; but if they stood "out, they must lie by the heels in their natural capa- "city." Therefore the idea that a corporation is not liable to be rated or amenable by process in respect of a rate is not well founded. Besides, by the act of 17 *G.* 2. *c.* 38. the remedy of distress is extended beyond the particular parish, into other precincts, and even into other counties. So that their property is answerable, tho' they cannot personally be punished.——The other two justices concurred,

concurred, that the maſter and fellows, as a corporation, were liable to be rated. *Cowper.* 79.

Tithes] *H.* 4 *G. K.* and *Turner.* The defendant being aſſeſſed towards the poor rate for his tithes as vicar, appealed to the ſeſſions, where he is abſolutely diſcharged. But by the court: As vicar he is chargeable by the 43 *El.* and the ſeſſions hath only power to moderate, but not diſcharge. And the order of ſeſſions was quaſhed. *Str.* 77.

And a parſon who lets to each pariſhioner his own tithes, is properly the occupier, and ought to be rated. 16 *Viner.* 427.

But if a parſon makes a leaſe of the tithes to one perſon, who afterwards lets the ſame to each pariſhioner, there the leſſee is the occupier, and ought to be taxed. So if a man has a wood, or ſtanding corn, and ſells the ſame ſtanding; the vendor is the occupier, and ſhall be taxed. 8 *Mod.* 61.

T. 8 *G. K.* and the inhabitants of *Lambeth.* The parſon lets his tithes to farm; and the farmer agrees with the tenant of the land, that in conſideration of his paying ſo much, he ſhall retain the tithe, and gather in the whole crop without dividing: and which of the two is chargeable to the poor rate, as occupier of the tithes, was the queſtion. And the ſeſſions diſcharge the leſſee of the parſon, and tax the tenant of the land. But by the court: The order muſt be quaſhed. The farmer of the tithes is *prima facie* liable to the poor rate, and therefore unleſs he can throw that charge over upon another, the tax muſt be made upon him. The tenant of the land in this caſe can never be ſaid to be the occupier of the tithes; for he is either a perſon who buys the tithes, or elſe he is to be taken as only excuſed from paying any; and no body can ſay, but that though the parſon thinks fit to excuſe a pariſhioner, he will ſtill remain in point of law the occupier of the tithes. This agreement being only by parol, cannot enure as an under leaſe of a thing that lies only in grant. Suppoſe it was the caſe of underwoods, which are ſold ſtanding, and the vendee grubs them up; can it be imagined, that makes him the occupier; or ſuppoſe the tenant ſells the whole crop ſtanding, will that make him leſs the occupier of the land? If it ſhould, it would be impoſſible for the officers of the pariſh to know whom to charge. We muſt take this tenant of the land to be like any other buyer of the tithes, ſince he has no more title to them than any ſtranger whatſoever; and when the parſon or his farmer receives a

ſum

ſum of money in lieu of tithe, that is in law a receipt of the tithe; with this only difference, that it is not tithe in kind. In the caſe of a compoſition (as this is) or a *modus*, it was never thought but that the parſon was chargeable as occupier of the tithe: therefore there being no colour to charge the tenant of the land, the order of ſeſſions muſt be quaſhed. *Str.* 525.

Coal mines or ſaleable underwoods] That is, proportioning them to an annual benefit. *Dalt.* 165.

In the caſe of the governor and company for ſmelting down lead, againſt *Richardſon* and others, *M.* 3 *G.* 3. a point was reſerved before Mr. juſtice *Bathurſt* at *Carliſle* aſſizes 1761, which was thus: The defendant had diſtrained for the poor rate aſſeſſed on the occupiers of the *lead* mines lying in the pariſh of *Alſton*; upon which they brought this action. The caſe ſtates, that the plaintiffs were leſſees from *Greenwich* hoſpital; that they worked the mine, but did not live in the pariſh of *Alſton*; that the profits of the hoſpital that year amounted to 1900 l, but thoſe to the plaintiffs the leſſees were quite precarious and uncertain, and that ſome years they gained nothing; that no lead mines had ever been aſſeſſed, except in an inſtance or two ſince making this diſtreſs.——By lord *Mansfield* chief juſtice: The queſtion is no more than this; Whether a leſſee of lead mines, whereon no rent is reſerved, other than a certain proportion of the ore to be raiſed, is rateable to the poor under the 43 *Eliz.* Now nothing can be clearer, than that theſe mines are not within the *letter* of the ſtatute; for the legiſlature could never intend by the word *coal* mines to comprehend other ſpecies of mines. If they had meant to include them, they would either have enumerated them, or uſed the general word *mines*. So that the expreſſion *coal mines* expreſsly excludes mines of any other ſort, as much as if they had been excepted. And there was a very good ground of exempting them; as from the nature of working them they are liable to more hazard and expence than coal mines are. And at that time, all copper, lead, and tin mines, in *Derbyſhire*, *Cornwall*, and *Mendip* in *Somerſetſhire* (which are the only counties where works of that kind were then eſtabliſhed) were governed by particular laws; whereby any ſtranger conforming to the ceremonies thereby required, was at liberty to work thoſe mines, without any reward to the owner of the ſoil. And as all theſe undertakings were attended with infinite hazard and expence, and often ruined the projectors; it is no improbable conjecture,

conjecture, that the legiſlature meant for this reaſon, and in order to encourage them to proceed in undertakings of this publick utility, to exempt them from any other burden or impoſition than thoſe that the miners law had impoſed. Indeed if a man has taken a leaſe of land, with privilege to dig for mines, he may be rated for the land: But that is not the preſent caſe. And where the legiſlature have not impoſed a tax, this court cannot do it by conſtruction. For example, the fees of a phyſician or lawyer are not made liable by the act, and therefore cannot be rated. Upon the whole, as here might be a very good reaſon for not making theſe mines liable, which is fortified by uſage, and they are not within the letter of the act, I am clear they are not rateable.——Mr. juſtice *Deniſon* was of the ſame opinion.——By Mr. juſtice *Wilmot:* There is a material difference between coals and other mineral works. Coals are eaſily found; but a vaſt deal of time and money is often ſpent in diſcovering other mines. The legiſlature therefore conſidered, how dangerous it would be to diſcourage theſe kinds of adventurers, by ſubjecting them to a tax. Another thing which convinces me, that the legiſlature meant only to include coal mines is, that in the ſtatute of 31 *El. c.* 7. concerning cottages, they have uſed the words *coal mines and all other mineral works*; which plainly ſhews, they never underſtood that coal mines would comprehend other ſorts of mines. *Burr. Mansf.* 1341. *Black. Rep.* 349.

E. 16 *G.* 3. *Rowls* and *Gells.* The plaintiff *Rowls* was leſſee under the crown of all lead mines with their appurtenances, within the ſoak and wapentake of *Wirkſworth*, with the *lot* and *cope* within the ſaid ſoak and wapentake, and was aſſeſſed for the ſame, as for an eſtate of 500 l a year. The duty of *lot* payable to the plaintiff, as leſſee of the crown, is the thirteenth diſh or meaſure of lead ore, got, dreſſed, and made merchantable at all the lead mines within the ſaid ſoak or wapentake; and *cope* is, ſixpence for every load or nine diſhes of lead ore raiſed at ſuch mines. Theſe duties are paid to and received by the plaintiff, without any riſk or expence in working the mines, and in that year wherein they were aſſeſſed amounted to the clear ſum of 500 l, but they are uncertain, and vary every year. It was argued, that this ſpecies of property is not aſſeſſable to the poor; and for this were cited the caſes of the *Governor and company for ſmelting lead* againſt *Richardſon*, and of *K.* and *Vandewall.* Unto which it was anſwered, that both the caſes are diſtinguiſhable from the preſent. In *K.* and *Vandewall*, the court held the

the quit-rents of a manor were not aſſeſſable; but the ground of the deciſion was, that the land itſelf was before aſſeſſed; and therefore if the lord were liable, it would be a double aſſeſſment. In the other caſe, the mine itſelf was aſſeſſed, which could not be, on account of the great uncertainty and hazard attending the adventure. But here, the mine itſelf is not aſſeſſed, nor are the miners in any reſpect affected: But it is the ſhare of profit accruing to the lord, which is rated as incident to and in reſpect of the ſoil, and by way of recompence for the injury done to the ſoil.——Lord *Mansfield* delivered the reſolution of the court: The poor rate is not a tax on the land, but a perſonal charge by reaſon of the annual profits which the leſſee of the crown receives out of the land, and which is not charged at all before to the poor. In general, the farmer or occupier of land, and not the landlord, is liable to this tax. For it ariſes by reaſon of the land in the pariſh, and the landlord is never aſſeſſed for his rent, becauſe that would be a double aſſeſſment, as his leſſee had paid before. *Lead* mines are not within the ſtatute of 43 *Eliz.* They are in themſelves uncertain, and may prove unſucceſsful to the adventurers. Taxes therefore upon the adventurers would be hard, and they are therefore excuſed. But he, who in caſe they do prove of value, receives a ſtipulated benefit from the profits or value of them, is not excuſable on the ſame ground; and therefore is expreſsly charged to the land-tax, as that falls upon the landlord. He is alike liable to the poor rate for his viſible real property in the pariſh; tho' where the poor tax is a charge on the leſſee, the landlord doth not pay in reſpect of his rent. Where the adventurer or leſſee of the mine pays nothing, it is no double tax in any light; becauſe the lord pays, not for that, which the leſſee or adventurer is excuſed from paying for; but the lord pays for his own. It is not a mere caſual profit, but an annual revenue, if any; and very different from the caſual profits of a manor, which are not annual; for there may be none for years. But if the mine produces profit to the miner, the lord's ſhare is certain, annual, and an annual rent is paid for it conſtantly. The miner is obliged to pay certain proportions to the owner of the land. What reaſon then is there to exempt theſe proportionable revenues? It makes no difference to the adventurer; it doth not prejudice or benefit him. But as ſuch obligatory payment is in reſpect of the land, the landowner ought not to receive it clearer or neater than any other part of his eſtate, when he is at no trouble, expence, or poſſible riſk. Therefore we are all of opinion, that

the plaintiff is liable to be rated for this property. *Cowper.* 451.

In the ſaid pariſh] A man having lands in other pariſhes than where he lives, the ſame being in leaſe or not in leaſe, he is to be taxed in the pariſh where he lives, according to his viſible eſtate there, and not for his lands or rent in another pariſh. *Dalt.* 165.

For the taxation ought to be made upon the inhabitants and occupiers of lands within the pariſh, according to the viſible eſtates and poſſeſſions, real and perſonal, which they have and enjoy within the pariſh, without regard to any eſtate which they have elſewhere. 2 *Bulſtr.* 354.

And by the 17 *G.* 2. *c.* 37. Where there ſhall be any diſpute in what pariſh or place improved waſtes, and drained and improved marſh lands lie, and ought to be rated; the occupiers of ſuch lands, or houſes built thereon, tithes ariſing therefrom, mines therein, and ſaleable underwoods, ſhall be rated to the relief of the poor, and to all other pariſh rates, within ſuch pariſh and place which lies neareſt to ſuch lands; and if on application to the officers of ſuch pariſh or place to have the ſame aſſeſſed, any diſpute ſhall ariſe, the juſtices at the next ſeſſions after ſuch application made, and after notice given to the officers of the ſeveral pariſhes and places adjoining to ſuch lands, and to all others intereſted therein, may hear and determine the ſame on the appeal of any perſon intereſted, and may cauſe the ſame to be equally aſſeſſed, whoſe determination therein ſhall be final. But this ſhall not determine the boundaries of any pariſh or place, other than for the purpoſe of rating ſuch lands to the relief of the poor, and other parochial rates. *ſ.* 1, 2.

The form of the rate may be to the following effect.

AN *aſſeſſment for the neceſſary relief of the poor, and for the other purpoſes in the ſeveral acts of parliament mentioned relating to the poor, for the pariſh of* —— *in the county of* —— *made and aſſeſſed the* —— *day of* —— *being the firſt rate at ſixpence in the pound for the preſent year* ——.

			l.	*s.*	*d.*
A. B.	——	——	0	3	0
C. D.	——	——	0	0	9
E. F.	——	——	0	2	6

And ſo forth.

Aſſeſſors, A. B. C. D. } Churchwardens.
E. F. G. H. } Overſeers of the poor.

2. By

2. By the aforeſaid ſtatute of the 43 *El.* the ſaid rate and taxation ſhall be made, *with the conſent of two juſtices, one whereof is of the* quorum, *dwelling in or near the pariſh or diviſion.* ſ. 1. Allowance of the rate by the juſtices.

And this conſent is uſually given, by the juſtices ſigning the ſame, with their allowance thereupon, thus:

WE *two of his majeſty's juſtices of the peace in and for the ſaid county, one whereof is of the* quorum, *do conſent unto and allow of this aſſeſſment: Witneſs our hands the* ——— *day of* ———

J. P.
K. P.

But this conſent is to be underſtood of two juſtices out of ſeſſions; for the ſeſſions have no original power to order an aſſeſſment to be made, but only if it come before them by way of appeal: for in ſuch caſe the party would be deprived of the benefit of appealing. L. *Raym.* 798.

And if the juſtices refuſe to ſign and allow the rate, the court of king's bench will grant a *mandamus* to compel them.

M. 7 *G. K.* and the juſtices of *Dorcheſter.* A *mandamus* iſſued to the juſtices to ſign a poor rate made by the churchwardens and overſeers. Before the return a motion was made to ſuperſede it, for ſeveral objections to the fairneſs of the rate; and that this would be ſpeedier and better for the poor, than to reſerve the debate of them for a formal return. But by the court: The two juſtices are neceſſary to ſign the rate only by way of form; for it is the churchwardens and overſeers that have the power of making it; and whether it be a fair rate or not, is proper for the juriſdiction of the ſeſſions, and was never intended for our examination. The *ſuperſedeas* being denied, the juſtices returned, that they could not allow the rate, it not being a juſt and proper rate: and the court having before given their opinion of this upon the motion, they reſented this uſage ſo far, that they quaſhed the return, and ordered an attachment againſt the juſtices, who thereupon ſubmitted, and returned that they had allowed the rate. *Str.* 393.

T. 7 *G.* 3. *K.* againſt *Edwards* and *Symonds.* The defendants were juſtices of the peace for *St. Ives* in *Cornwall*, and had evaded the ſigning of a poor rate, in obedience to a writ of *mandamus*, by keeping out of the way, ſo as not to be ſerved with the writ; and an attachment was granted for the contempt. *Black. Rep.* 637.

Rate to be publiſhed.

3. *The churchwardens and overſeers ſhall cauſe publick notice to be given in the church, of every rate for relief of the poor, allowed by the juſtices, the next* Sunday *after ſuch allowance; and no rate ſhall be reputed ſufficient to be collected, till after ſuch notice given.* 17 G. 2. c. 3. ſ. 1.

Any perſon may inſpect the ſame.

4. *And they ſhall permit any inhabitant to inſpect ſuch rate at all ſeaſonable times, paying* 1 *s; and ſhall give copies on demand, being paid* 6 *d for every* 24 *names.* 17 G. 2. c. 3. ſ. 2.

And if any churchwarden or overſeer ſhall not permit any inhabitant to inſpect, or refuſe to give copies as aforeſaid, he ſhall forfeit 20 *l to the party grieved.* ſ. 3.

Appeal againſt the rate.

5. *If any perſon ſhall be aggrieved by any aſſeſſment, or ſhall have any material objection to any perſon's being put in or left out of ſuch aſſeſſment, or to the ſum charged on any perſon or perſons therein; he may, giving reaſonable notice to the churchwardens or overſeers, appeal to the next ſeſſions for the county, riding, diviſion, corporation, or franchiſe; but if reaſonable notice be not given, then they ſhall adjourn the appeal to the next quarter ſeſſions after.* 17 G. 2. c. 38. ſ. 4.

So that in this caſe, in a town corporate, the appeal muſt be to the corporation juſtices. Whereas, in the caſe of an order of removal of a pauper from a town corporate, the appeal muſt be to the ſeſſions of the county.

And *on all appeals from rates, the juſtices ſhall amend the ſame, in ſuch manner only as ſhall be neceſſary for giving relief, without altering ſuch rates, with reſpect to other perſons mentioned in the ſame; but if upon an appeal from the whole rate, it ſhall be found neceſſary to ſet aſide the ſame, then they ſhall order a new rate to be made.* id. ſ. 6.

And *the court may award coſts to either party as in caſes of ſettlement by the* 8 *&* 9 *W.* id. ſ. 4.

Which ſhall be recovered, according to the ſaid ſtatute, by indictment, if the party lives within the juriſdiction of the juſtices; otherwiſe, by diſtreſs, or commitment where no diſtreſs is to be had.

After appeal, rates to be entred in a book.

6. *True copies of the rate ſhall be entred in a book, by the churchwardens and overſeers, within* 14 *days after all appeals from ſuch rates are determined; and they ſhall atteſt the ſame, by putting their names thereto; and all ſuch books ſhall be kept by the churchwardens and overſeers for the time being, whereto all perſons liable to be aſſeſſed may freely reſort, and ſhall be delivered over from time to time, to the new churchwardens and overſeers, as ſoon as they enter into their offices, to be preſerved and produced at the ſeſſions when any appeal is to be heard.* 17 G. 2. c. 38. ſ. 13.

7. *It*

7. *It ſhall be lawful as well for the preſent as ſubſequent churchwardens and overſeers, or any of them, by warrant from any two ſuch juſtices, one whereof is of the quorum, to levy the ſaid ſums, and all arrearages, of every one that ſhall refuſe to contribute according as they ſhall be aſſeſſed, by diſtreſs and ſale.* 43 El. c. 2. ſ. 4. Rate to be levied by diſtreſs.

And by the 17 G. 2. c. 38. *The goods of any perſon aſſeſſed and refuſing to pay, may be levied by warrant of diſtreſs, in any part of the county; and if ſufficient diſtreſs cannot be found within the county, on oath made thereof before a juſtice of any other county (which oath ſhall be certified in the warrant) the goods may be levied in ſuch other county or precinct, by virtue of ſuch warrant and certificate; and if any perſon ſhall be aggrieved by ſuch diſtreſs, he may appeal to the next ſeſſions for the county or precinct where the aſſeſſment was made.* 1. 7.

But by *Holt* Ch. J. in the caſe of *Tracy* and *Talbot*, T. 3 *An.* The rate cannot be diſtrained for by virtue of a general warrant made before the rate; but there ought to be a ſpecial warrant on purpoſe. 2 *Salk.* 532. That is to ſay, the non-feaſance of the party ſhall not be left to the judgment of the officer, who may out of private reſentment ſell his neighbour's goods without ſufficient cauſe; but oath of the refuſal muſt be made before the juſtices. And it is reaſonable that the party ſhould be heard in his defence; for he may ſhew cauſe variouſly why a diſtreſs ſhould not be granted; as, that the rate was not regularly allowed, or was not publiſhed in the church, or that he had given notice of appeal, or that no demand or refuſal had been made, and the like.

The form of the ſummons in which caſe may be this:

Weſtmorland. } To *A. O.* of the pariſh of —— in the ſaid county, yeoman.

WE *whoſe names are hereunto ſet and ſeals affixed, two of his majeſty's juſtices of the peace in and for the ſaid county, one whereof is of the* quorum, *do hereby ſummon you perſonally to appear before us at the houſe of —— in —— in the ſaid county, on —— the —— day of —— at the hour of —— in the forenoon of the ſame day, to ſhew cauſe why you refuſe to pay the rate or aſſeſſment made for the relief of the poor of the ſaid pariſh for this preſent year; otherwiſe we ſhall proceed as if you had appeared. Given under our hands and ſeals the —— day of —— in the year of our Lord ——.*

And then the warrant of diſtreſs thereupon may be thus:

Weſtmorland. { To the churchwardens and overſeers of the poor of the pariſh of ——— in the ſaid county.

WHEREAS *in and by a rate and aſſeſſment made, aſſeſſed, allowed, and publiſhed, according to the ſtatutes in that caſe made and provided,* A. O. *an inhabitant and occupier of an houſe in the ſaid pariſh of —— was duly rated and aſſeſſed for and towards the neceſſary relief of the poor of the ſaid pariſh for this preſent year the ſum of* 3*s. And whereas it duly appeareth unto us, two of his majeſty's juſtices of the peace in and for the ſaid county, one whereof is of the* quorum, *as well upon the oath of* O. P. *overſeer of the poor of the ſaid pariſh, as otherwiſe, that the ſaid ſum of* 3*s hath been lawfully demanded of the ſaid* A. O. *and that the ſaid* A. O. *hath refuſed and doth refuſe to pay the ſame; And whereas the ſaid* A. O. *having appeared before us in purſuance of our ſummons for that purpoſe, hath not ſhewed to us any ſufficient cauſe why the ſame ſhould not be paid:* [Or, *And whereas it hath been duly proved to us upon oath, that the ſaid* A. O. *hath been duly ſummoned to appear before us the ſaid juſtices, to ſhew cauſe why the ſame ſhould not be paid, but he the ſaid* A. O. *hath neglected to appear according to ſuch ſummons; and hath not ſhewed to us any ſufficient cauſe why the ſame ſhould not be paid:*] *Theſe are therefore to require you forthwith to make diſtreſs of the goods and chattels of him the ſaid* A. O. *And if within the ſpace of* [four] *days next after ſuch diſtreſs by you taken, the ſaid ſum, together with reaſonable charges of taking and keeping the ſaid diſtreſs, ſhall not be paid, that then you do ſell the ſaid goods and chattels ſo by you diſtrained, and out of the money ariſing by ſuch ſale, that you detain the ſaid ſum of —— and alſo your reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs: rendering to him the ſaid* A. O. *the overplus on demand. And if no ſuch diſtreſs can be made, that then you certify the ſame unto us, to the end that ſuch further proceedings may be had therein, as to law doth appertain. Given under our hands and ſeals this ——— day of ———.*

And where any diſtreſs ſhall be made, for money juſtly due for relief of the poor, the diſtreſs itſelf ſhall not be deemed unlawful, nor the parties making it be deemed treſpaſſers, for any defect or want of form in the warrant for the appointment of overſeers, or in the rate, or in the

the warrant of diſtreſs thereupon; nor ſhall the parties diſtraining be deemed treſpaſſers *ab initio*, on account of any irregularity, which ſhall be afterwards done by the parties diſtraining; but the party aggrieved by ſuch irregularity, may recover full ſatisfaction for the ſpecial damage, and no more, in an action of treſpaſs, or on the caſe. But where the plaintiff ſhall recover in ſuch action, he ſhall be paid his full coſts. But no plaintiff ſhall recover in any action, for any ſuch irregularity, if tender of amends hath been made by the party diſtraining, before ſuch action brought. 17 *G.* 2. *c.* 38. *ſ.* 8, 9, 10.

Commitment for want of diſtreſs.

8. *In defect of ſuch diſtreſs, it ſhall be lawful for two ſuch juſtices to commit ſuch perſon to the common gaol, there to remain without bail or mainprize, until payment of the ſame.* 43 El. c. 2. ſ. 4.

Arrears to be levied by the ſucceeding overſeers.

9. *And if any perſon ſhall neglect to pay to ſuch overſeers, the ſucceeding overſeers ſhall levy the arrears, and ſhall reimburſe their predeceſſors the ſame which are allowed to be due to them in their accounts.* 17 *G.* 2. c. 38. ſ. 11.

In caſe a perſon charged ſhall die before payment (which is a thing that muſt needs very frequently happen), it hath been doubted how far the deceaſed's goods in the hands of the executor or adminiſtrator are liable to anſwer the ſame. As in the caſe of *Stephens* againſt *Evans* and others, *E.* 1. *G.* 3. *William Veſey* was aſſeſſed to the poor rate, and died inteſtate. Adminiſtration of his goods was granted to *John Stephens* the plaintiff. After which, two juſtices executed a warrant, in which warrant the ſaid aſſeſſment was recited, and in the ſaid warrant it was alſo recited that it appeared to the juſtices on the oath of the late overſeer, that the ſum aſſeſſed had been demanded of the ſaid *William Veſey*, and (ſince his deceaſe) of his widow and repreſentative *Suſanna Veſey*, and that they refuſed to pay the ſame; therefore the juſtices require the officer to diſtrain the goods and chattels of the late *William Veſey*. An action of trover was brought by *Stephens* the adminiſtrator, and a ſpecial caſe was ſtated for the opinion of the court; and the queſtion as ſtated was, Whether the diſtraining and taking and ſelling the cattle which were the goods of *William Veſey*, in the hands of the plaintiff his adminiſtrator, by virtue of the ſaid warrant, was lawful, or not.—Mr. *Norton*, on behalf of the plaintiff, argued that it was not lawful, and that an action of trover is maintainable againſt the pariſh officers for taking them. And he made three objections: 1. It was a bad *rate*; being made to reimburſe

an overſeer, for the overſeer was not obliged to advance the money without a previous rate; and he may reimburſe himſelf out of the next, made in his own time: And it was made for half a year, whereas it ought not to have been for longer than a month. 2. Here was no *refuſal* by the repreſentative to pay the money. And there can be no diſtreſs, without a previous demand and refuſal. The refuſal was made by *Veſey* who is dead; and by the widow, who was not in fact, tho' ſhe is in the warrant ſtated to be, his repreſentative. 3. Suppoſing the *rate* and *warrant* to be good; yet the goods of *Veſey* are not diſtrainable, in the hands of his perſonal repreſentative, for a rate made upon *Veſey* himſelf. There is no inſtance of it, nor any caſe to ſupport this; therefore it ought not to be ſupported. Nor is there any neceſſity for it; for the poor cannot ſuffer by the non-payment of this money; there are other proviſions for raiſing the money. This is a *caſus omiſſus*. The acts of parliament give no ſuch power to the juſtices, as to grant ſuch a warrant; and nothing can be intended in favour of their juriſdiction. It is not the *thing* that is rated, but only the *perſon*, the occupier; and the ſtatute gives the means of compelling it. The refuſal to contribute according to the aſſeſſment is treated as an offence, and the *offender* is to be ſent to gaol. But the executor or adminiſtrator is not an offender. It is a perſonal charge. An overſeer could not bring an action for it, even againſt the perſon charged. He muſt purſue the particular remedy appointed by the act. And if ſo, the court will never extend the remedy, againſt a repreſentative. If an adminiſtrator ſhould pay this rent, he might be guilty of a *devaſtavit*. And the compulſion by diſtreſs will not alter the caſe, or be an excuſe for a *devaſtavit*. —— Mr. *Biſhop*, on the other ſide, for the juſtices and pariſh officers: The court will not now enter into any objection to the *rate*. The only queſtions therefore are, as to the *warrant*, and as to the aſſets being diſtrainable in the hands of the *repreſentative*. As to the demand of the money upon *Veſey* himſelf, it was made upon him, and is ſo ſtated. And as to the demand upon the repreſentative, the end and intention of this ſpecial caſe was to ſettle the material point, the real queſtion, Whether the goods of the perſon rated are or are not diſtrainable in the hands of the repreſentative. The practice is on our ſide, that they are. It is no anſwer to ſay that other people are liable to pay, if the perſon rated does not: The queſtion is, Whether the repreſentative of the perſon rated is or

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is not liable. The authority to make this warrant, and to make the diſtreſs in obedience to it, is founded upon the ſtatute of the 43 *El.* which gives the remedy by diſtreſs, on refuſal to pay. The demand of the money is to be made, and in the preſent caſe was actually made, upon the perſon aſſeſſed: And that made it a debt from him. There was no need of a demand upon the repreſentative. The aſſets were already become liable, and remained ſo in his hands. As to the danger of a *devaſtavit*; a repreſentative could not be guilty of a *devaſtavit*, even by paying a ſimple contract debt before a bond debt, if he had no notice of the bond debt: And the diſtreſs made upon him would be a juſtification to him for paying it under the compulſion of ſuch diſtreſs. I do not ſay, that the executor or adminiſtrator could be ſent to gaol, for non-payment of this debt; but yet the aſſets in his hands are diſtrainable, as the proper fund out of which it is to be paid; eſpecially as no action would lie for it (as Mr. *Norton* agrees.)——Mr. *Norton*, in reply: No anſwer at all has been given to my objection to the *rate* itſelf. And I ſay, that even if the adminiſtrator were admitted to be liable to pay, yet ſtill there ought to have been a previous demand upon him. No ſuch practice as what Mr. *Biſhop* ſpeaks of, is ſtated in the caſe; and therefore the court will intend that there is none ſuch. And I believe there is none. I never heard of it before. I take it to be directly the other way. And at all events, the poor cannot ſuffer; for there are other perſons who muſt make up the deficiency, in caſe this man do not pay. This is ſcarce a ſolvent eſtate; becauſe the widow has renounced adminiſtration, and it is granted to a creditor. This is a charge upon the perſon, which dies with him: Like coſts payable by one who dies; (for which a bill in chancery cannot be revived: And ſo in this court, upon informations, they are gone by the death of the party.) And the adminiſtrator cannot poſſibly know, in what courſe of adminiſtration to pay this rate. If an executor or adminiſtrator pays a debt of a lower nature, at that time knowing of others of an higher, it is undoubtedly a *devaſtavit*. And here there may be debts of an higher nature, which the adminiſtrator may know of. And if he is obliged to pay it under compulſion, he ought to pay it without compulſion. It is a charge impoſed; not a debt. The caſe was left * open upon its being

* Mr. *Biſhop* denied this.

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ſtated at the trial, to all or any other objections that could be made upon the face of it. There were other debts beſides this.——By Mr. juſtice *Deniſon:* That makes no difference. The queſtion is ſtated particularly upon this caſe; and is confined to the levying the money upon the repreſentative of the perſon charged. I ſhould think, the event muſt have often happened, in fact and experience. The practice is not ſtated. But however, the queſtion is, what the law is, and not what the practice is. It is a rule, that upon a new ſtatute which preſcribes a particular remedy, no remedy can be taken, but the particular remedy preſcribed by the ſtatute. Therefore clearly, no action of debt will lie for a poor rate. The remedy given by the act of the 43 *El.* muſt be conſidered with analogy to other like caſes. This ſtatute conſiders the perſon rated and refuſing to pay, as an offender. And it gives no authority but to diſtrain the goods of the offender. Therefore no goods are liable to be diſtrained by the words of this act, but the goods of the offender himſelf. I never apprehended, that the goods of the perſon aſſeſſed to the rate, can be charged in the hands of the repreſentative. And therefore (as at preſent adviſed) I ſhould think that this action will lie for taking them. I agree that this is in the nature of an execution: But yet it is perſonal; and I do not know that it is a *lien* upon the aſſets.——Mr. juſtice *Wilmot* concurred; and ſaid he had no doubt about it. He thought the intention of the ſpecial caſe, which ſtates a particular queſtion, appeared to be, to ſubmit this queſtion only to the court. As to the objections that have been made to the *rate*; the firſt is of no great importance: For tho' you cannot make a rate to reimburſe overſeers; yet the overſeer may immediately, whilſt in office, reimburſe himſelf out of the next money raiſed for the rate. As to the ſecond, he ſaid, he believed that whatever the law might be, the practice was, not to make theſe rates monthly. On the merits: It is not ſtated in the *caſe*, that a demand was made even upon *Veſey* (the perſon aſſeſſed), and that he refuſed payment; tho' it is ſo recited in the *warrant*. But that is not material. For I have not the leaſt doubt, but that the repreſentative ought to have been convened before the juſtices, and aſked, what he had to ſay why he ſhould not pay the rate aſſeſſed upon *Veſey* his inteſtate. This caſe ſeems to be like a *ſcire facias* upon a judgment: upon which, execution cannot be ſued out againſt the repreſentatives, without aſking them what they have to alledge why it ſhould not be taken out. At the time of the

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teſt of the warrant, they were the goods and chattels of the repreſentative. If the teſte had been prior to the death, they would have been the goods and chattels of the deceaſed. But if teſted after his death, they are not his goods and chattels, but the goods and chattels of the repreſentative. Therefore if the money had been demanded of the repreſentative, I ſhould have had great doubt, whether this warrant and diſtreſs would not have been good. For I cannot think that by the death of the perſon charged with this rate, the aſſeſſment before made upon him and demanded of him would have been quite gone and loſt to the pariſh, and could not have been any way come at. For tho' it may be a charge upon the perſon, yet it is a charge upon him in reſpect of the thing occupied. And tho' he be called an offender, if he refuſe to pay it; yet he can be no otherwiſe conſidered as an offender, than every other debtor who refuſes or neglects to pay his debts, and thereby renders his perſon and goods liable to be taken in execution, is ſo far treated as an offender, till he ſhall comply with the judgment awarded. And in experience I know it to be the caſe, that theſe payments by executors or adminiſtrators are often allowed to go in diſcharge of the aſſets of the teſtator or inteſtate; tho' I do not remember that it has been ſettled in what courſe of adminiſtration. Indeed it might be of too much conſequence, to put it into the power of juſtices of the peace to determine upon the adminiſtration of aſſets, as to the courſe in which they are to be adminiſtred. In a caſe of *Wallis* and *Hewit*, at *Guildhall*, at the ſittings after *Hilary* term, 5 *G.* 2. before lord chief juſtice *Eyre*, in an action of treſpaſs, two aldermen of *London* had made a warrant to diſtrain a man for a poor rate. The man died inteſtate. But before that, there had been a demand made upon him, and refuſed by him, and a warrant of diſtreſs granted upon his refuſal. And then he died. *Eyre* Ch. J. held, that a diſtreſs could not be made after his death; or if it could, yet the repreſentative ought to have been ſummoned: And he held the property to be changed. A caſe was made for the opinion of the court of common pleas: But I could not hear what became of it: Lord chief juſtice *Eyre* was a great lawyer. It would be ſtrange, that a diſtreſs ſhould be taken upon a man's goods, without hearing him. And it would make great confuſion in the adminiſtration of aſſets. He may have paid or retained judgment debts, prior to this diſtreſs for the rate.——Mr. *Gould* was retained to take notes for the defendants. But he ſaid, that if Mr. *Norton* inſiſted upon the want of a demand from the repreſentative, he

he could not pretend to maintain the caſe on the part of the defendants. —— Mr. juſtice *Deniſon* and Mr. juſtice *Wilmot* ſaid that this was an eſſential circumſtance. And by the court (lord *Mansfield* chief juſtice and Mr. juſtice *Foſter* being abſent) judgment was given for the plaintiff the adminiſtrator. *Burrow, Mansfield.* 1152. *Black. Rep.* 284.

[Note, The arguments in this caſe are here recited ſomewhat at large, in order to bring in as much light as may be upon this ſubject; eſpecially as no other caſe hath occurred, wherein this point hath been conſidered. And this particular caſe, as appears, was determined on its own peculiar circumſtances, namely, for want of ſummoning the adminiſtrator. So that the principal point ſeemeth yet to remain undetermined; which includes in it theſe particulars: 1. Where the warrant of diſtreſs is made out during the lifetime of the perſon aſſeſſed, whether the officers can follow the goods into the hands of the adminiſtrator or any other, without taking notice of any perſon as executor or adminiſtrator? 2. Where the warrant of diſtreſs is not made out till after the death of the perſon aſſeſſed, whether on ſummoning the adminiſtrator, and refuſal by him, the officers can diſtrain the goods in the hands of ſuch adminiſtrator? 3. Whether the adminiſtrator himſelf may be aſſeſſed in a ſucceeding rate, as for arrears; and on the aſſeſſment being confirmed at the ſeſſions upon his appeal, whether diſtreſs may be made as of his own goods, and whether for defect of diſtreſs he may be committed? 4. In what courſe of adminiſtration ſuch aſſeſſment ſhall be eſtimated? And if the adminiſtrator ſhall plead before the juſtices debts of an higher nature, or inſufficiency of aſſets; whether and how far the juſtices are to take notice of ſuch plea, and how or in what manner they ſhall determine the ſame?]

Certiorari. 10. *E.* 5 *G. K.* and *Uttoxeter.* Upon great debate, and ſearch after precedents, it was held, that a *certiorari* would not lie to remove the poor rate itſelf, the remedy being to appeal, or by action when a diſtreſs is taken, which will anſwer all the ends of juſtice in coming at an equal rate; whereas if the rate itſelf ſhould be required to be ſent up, great inconveniencies and delays would follow. *Str.* 932. *Caſes of S.* 317.

E. 7 *G.* 2. *K.* and the juſtices of *Salop.* The true objection againſt a *certiorari* is, that if rates were removeable, the poor might be ſtarved whilſt the rates were depending; and therefore the court, from the great inconvenience that would

would attend the removal of rates, have refuſed to do it. 1 *Seſſ. C.* 201. *Str.* 975.

ii. Taxing others in aid.

Hundred contributory.

1. *If the ſaid juſtices do perceive, that the inhabitants of any pariſh are not able to levy among themſelves ſufficient ſums for the purpoſes aforeſaid, then the ſaid two juſtices* (1 Q.) *ſhall tax, rate, and aſſeſs as aforeſaid any other of other pariſhes, or out of any pariſh within the hundred, to pay ſuch ſums to the churchwardens and overſeers of the ſaid poor pariſh, for the ſaid purpoſes, as the ſaid juſtices ſhall think fit.* 43 El. c. 2. ſ. 3.

That the inhabitants of any pariſh are not able] *H.* 8 *An.* Order of two juſtices: The caſe was thus: There were two vills in one pariſh, and the juſtices recite in their order, that one of the vills was very rich, and the other very poor; and further, that the vill which was rich, did not pay half ſo much to the poor, as the poor vill did. Objected, 1. One vill ought not to contribute to another, becauſe the ſtatute mentions pariſhes only. 2. The reaſon given for charging the rich vill to contribute to the poor vill is uncertain; *viz.* becauſe they do not pay half ſo much as the poor vill does, without ſhewing that either vill pays any thing to the poor. By the court: As to the firſt objection, ſurely this will come within the equity of the ſtatute, though the ſtatute only makes mention of *pariſhes*; and it is highly reaſonable, that one vill ſhould contribute to another in the ſame pariſh. But this order muſt be quaſhed on the ſecond objection, for the uncertainty. *Foley.* 25.

Then the ſaid two juſtices] *T.* 2 *J.* 2. *K.* and *Grieſly.* The *ſeſſions* rated the adjacent pariſhes: Quaſhed; becauſe the ſtatute appoints it to be done by the two juſtices, and hereby they prevent an appeal. *Caſes of S.* 259.

The ſaid two juſtices ſhall tax, rate, and aſſeſs] *T.* 12 *G.* 2. *St. Mary*'s and *St. Peter and Paul*'s in *Marlborough.* Two juſtices order the churchwardens and overſeers of *St. Peter and Paul*'s to aſſeſs, raiſe, and levy a ſum towards the maintenance of the poor of *St. Mary*'s. But the order was quaſhed by the court; becauſe the juſtices had delegated their power to the churchwardens and overſeers, whereas by the ſtatute they themſelves are to make the rate on all, or on particular perſons. *Str.* 1114.

In this caſe, a *mandamus* was moved for to the juſtices, to make a rate for the ſupport of the poor of the pariſh of *St. Mary*'s; which was oppoſed, becauſe the pariſh officers ought to make the rate, and the juſtices are only to ſign it. To which it was anſwered, that this motion was grounded on this clauſe of the ſtatute; and thereupon a *mandamus* was granted, directed to the juſtices; and as this is a matter of right, they ought to make a return. 16 *Vin.* 416.

And the juſtices are to make the taxation, and leave it to the churchwardens and overſeers to levy it. 2 *Salk.* 480.

Any other of other pariſhes] *M.* 32 *C.* 2. Reſolved, that the juſtices may impoſe the charge upon any of the inhabitants of the neighbouring pariſhes, and are not obliged to put a general tax upon the whole pariſh. *Comb.* 309. 1 *Ventr.* 350.

T. 12 *G. K.* and *Boroughſen.* There was a taxation of ſeveral perſons in a pariſh: Objected, that it ſhould be of all the perſons in a particular place or pariſh. The court thought it unreaſonable, that ſeveral perſons in a pariſh ſhould be charged, and not all, but that the words of the act are very ſtrong; and did not quaſh the order for this objection. *Foley.* 29.

Within the hundred] *T.* 9 *An. Boroughſen* and *St. John*'s. Motion to quaſh an order of two juſtices; for that it doth not appear upon the order, that the pariſh which is charged to aid the pariſh that is not able to maintain its own poor, is within the ſame hundred. And quaſhed by the whole court. *Foley.* 27.

H. 8 *An.* Motion to quaſh an order of two juſtices, which was made to aſſeſs the pariſhes of *St. Stephen* and *St. Mary Magdalen* in *Norwich*, in aid of the pariſh of *St. Benedict*, which was not able to maintain its own poor. Objection. Theſe pariſhes are not in the ſame hundred; it is in *Norwich* where there is no hundred, ſo the juſtices have no juriſdiction. And by *Holt* Ch. J. The order muſt be quaſhed. *Foley.* 31.

E. 31 *G.* 2. *K.* and the tything of *Milland.* Two juſtices tax the inhabitants of the tything of *Milland*, in aid of the pariſh of *St. Peter's Cheeſehill*, in the ſame county. The ſeſſions confirm the order, ſetting forth, that the tything of *Milland*, and the pariſh of *St. Peter's Cheeſehill*, both lie in the ſame *liberty of the ſoke* where the ſaid pariſh lies. On referring it back to the ſeſſions to be more

more particularly ſtated, it appeared (ſubſtantially) to be a hundred, though called by another name. And the court held, they were not reſtrained to the particular word *hundred*, but it is ſufficient if it be ſignified by any word equivalent. And the orders were affirmed. *Burrow, Mansfield.* 576.

As the ſaid juſtices ſhall think fit] *E.* 12 *G. K.* and 4*t. Mary*'s in *Marlborough*. An order was made for a neighbouring pariſh to contribute, *ſo long as we the ſaid juſtices ſhall think fit*. But by the court, It muſt be quaſhed: for the diſcretion that is left in the juſtices, is as to the *quantum*, and not as to the duration of the contribution. *Str.* 700.

M. 6 *W. K.* and *Knightly*. A ſum in groſs was taxed upon a neighbouring pariſh, for a whole year; which was objected to as unreaſonable, becauſe their ability may change: nevertheleſs the order was confirmed. *Comb.* 309.

T. 6 *G. K.* and *Telſcombe*. By the court: The order for the contributory pariſh to make a rate at 6 d in the pound is ill for incertainty: it ſhould have been, to raiſe ſuch a ſum certain. Quaſhed. *Str.* 314.

T. 12 *G.* 2. Caſe of the pariſh of *St. Peter and Paul* in *Marlborough*. Two juſtices, reciting the inability of the pariſh of *St. Mary* to maintain its own poor, order the pariſh of *St. Peter and Paul* to contribute 60 l for the maintenance of the poor of the other pariſh: And objection being made to their ordering ſuch a groſs ſum, the court held it in that reſpect to be well. *Str.* 1114.

County contributory.

2. *And if the ſaid hundred ſhall not be thought by the ſaid juſtices able and fit to relieve the ſaid ſeveral pariſhes not able to provide for themſelves, as aforeſaid, then the juſtices at their general quarter ſeſſions ſhall rate and aſſeſs as aforeſaid, any other of other pariſhes, or out of any pariſh within the county.* 43 El. c. 2. ſ. 3.

T. 3 *G. K.* and *Percivall*. Order of ſeſſions, reciting that the pariſh is not able to maintain its own poor, nor any other pariſh within the hundred to contribute, therefore the juſtices at the ſeſſions tax other pariſhes in another hundred within the ſame county. It was moved to quaſh it, and inſiſted that the ſtatute gives no authority to the ſeſſions to charge people out of the hundred, till two juſtices have inquired whether any pariſh in the hundred can contribute: The firſt application to be to two juſtices, and the ſecond to the ſeſſions. *Parker* Ch. J. I do not ſee, to what purpoſe it would be, for the two juſtices to make an order, only to adjudge that no pariſh

within the hundred is able to contribute. We will presume the seſſions is ſatisfied of that, and if the two juſtices ſhould make ſuch an adjudication, yet the ſeſſions muſt inquire into the truth of it; and if no order appears, which charges any pariſh within the hundred, it is a ſufficient ground for the ſeſſions to act. If the two juſtices had charged any pariſh within the hundred, that would have ſtopped the ſeſſions from proceeding; and the ſufficiency of the hundred depends on this, whether two juſtices have ever charged the hundred.—*If the ſaid hundred ſhall not be thought by the ſaid juſtices able*, that is, if the two juſtices do not adjudge it ſo. If two juſtices ſhould adjudge the hundred not able, yet if other two juſtices adjudge the contrary, their charge would be good, and the ſeſſions be ouſted of their juriſdiction, notwithſtanding the firſt adjudication. *Eyre* J. Here are two juriſdictions, that of the two juſtices, and that of the ſeſſions, and both are original juriſdictions. They are different in all reſpects, for the two juſtices have no power out of the hundred, nor the ſeſſions within it. There need be no appeal from an adjudication of two juſtices, for that would be to appeal from a nullity. And the order was confirmed. *Str.* 56.

iii. How far parents and children are liable to maintain each other.

Parents and children mutually liable.

1. *The father and grandfather, mother and grandmother, and children of every poor, old, blind, lame and impotent perſon, or other poor perſon not able to work, being of a ſufficient ability, ſhall at their own charges relieve and maintain every ſuch poor perſon, in that manner, and according to that rate, as by the juſtices of that county where ſuch ſufficient perſons dwell in their ſeſſions ſhall be aſſeſſed; on pain of* 20*s a month.* 43 El. c. 2. ſ. 7.

Which penalty ſhall go to the uſe of the poor of the ſame pariſh, and be levied by ſome or one of the churchwardens or overſeers, by warrant from two ſuch juſtices (1. Q.) *by diſtreſs; or in defect thereof any two ſuch juſtices may commit the offender to the common gaol, there to remain without bail or mainprize, till the ſaid forfeitures ſhall be paid.* ſ. 2. 11.

Father and mother] *T.* 9 *An.* Q. and *Clentham.* It was moved to quaſh an order upon the father in law, to maintain his wife's daughter, his wife being dead. By the whole court: The huſband ought to provide for the daughter in law during the wife's life, in the right of

of his wife; but when the wife dies, the relation is diſſolved, and he is not by any means obliged to provide for the daughter in law after her mother's death. *Foley.* 39.

E. 10 *An.* *Q.* and *St. Botolph's Aldgate.* The ſingle queſtion was, Whether the huſband ſhall be chargeable to maintain his wife's children by a former huſband: And it was reſolved, he was, during the wife's life, in her right; but not after. *Foley.* 42.

There was an order upon the mother, who was married to a ſecond huſband, to maintain her children which ſhe had by the former huſband: But by the court, a feme covert cannot be charged, but they ought to have charged her huſband. *Foley.* 44.

M. 7 *G.* 2. *K.* and *Dempſon.* It was moved to quaſh an order upon the father to pay a certain ſum weekly to his ſon's wife, his ſon having run away from her as ſoon as he married her, and ſhe having had a child in the mean time. To this order two exceptions were taken: Firſt, that it appears the ſon's wife was an adultereſs; and therefore the huſband himſelf would not have been bound to maintain her, much more the huſband's father could not. To this it was anſwered, and allowed by the court, that whatever effect this act of the wife might have upon the huſband, it could not have any upon the pariſh. Secondly, it was objected, that the ſtatute extends only to natural relations, and for this purpoſe was cited the caſe of *K.* and *Munden* (hereafter following): and the court was of opinion that this objection was fatal, and that the act doth not extend to relations in law. 2 *Barnardiſt.* 329, 364. Note, Sir *John Strange* in his report of this caſe ſays, that the order was for the father to maintain the ſon's wife, after a divorce *a menſa & thoro* for adultery. *Str.* 955.

Grandfather and grandmother] *M.* 7 *C.* *K.* and *Reeve.* The *reputed* grandfather or grandmother are not within the ſtatute; for a baſtard is *filius populi.* 2 Bulſt. 344.

H. 7 *Cha.* *Gerard*'s caſe. If a man marries a grandmother, and has an eſtate with her in marriage; for this eſtate he ſhall be charged to be contributory towards the relief and maintenance of the grandchild, within the meaning of this ſtatute: but otherwiſe it ſhall be, if he has not any eſtate or advancement by his marriage with her. By *Whitlocke* and *Croke* juſtices—But by *Croke* J. He ſhall be charged with keeping the grandchild during the life of the grandmother his wife; and if ſhe dies, he ſhall not be charged after her death. 2 *Bulſtr.* 346.

But by *Holt* Ch. J. If the wife dies, he muſt maintain the grandchildren, though the relation be determined. And he ſaid, that in *Gerard*'s caſe, who married the grandmother of a poor perſon, though ſhe died, and ſo the relation was determined, yet the ſtatute was to be conſtrued by equity, and that he was a grandfather within the ſtatute. *Comb.* 321. 405.

But in the caſe of 2 *Bulſtr.* 346. it does not appear that the grandmother was dead; nor is there any reſolution, the judges differing in their opinions. 16 *Viner.* 417.

Upon the whole, the diſtinction ſeems to be this: If a mother or grandmother marries again, and was before ſuch ſecond marriage of ſufficient ability to keep the child, the huſband ſhall be charged to maintain it; for this being a debt of her's when ſingle, ſhall like others extend to charge the huſband; but at her death, the relation being diſſolved, the huſband is under no farther obligation. 1 *Blackſt.* 448.

And though the father be living, yet if he be unable, the grandfather being of ability, may be compelled to keep the grandchild, and alſo to pay ſo much money as the juſtices ſhall think reaſonable for the time paſt. *M.* 6 *An.* Q. and *Joyce.* 16 *Viner.* 423.

And children] *T.* 5 *G. K.* and *Munden.* Order, reciting that *Munden* had a good fortune with his wife, and that her mother was poor, therefore he is ordered to provide for her. By *Pratt* Ch J. The caſes which have hitherto been, were either where the judges were divided, or the matter came not directly in queſtion, or was only a caſe at the judge's chamber. It never came judicially before the whole court till now. And as it is *res integra*, on conſideration we are all of opinion, that the ſon in law is not bound, either within the words or intent of the ſtatute, which provides only for natural parents. By the law of nature, a man was bound to take care of his own father and mother. But there being no temporal obligation to inforce that law of nature, it was found neceſſary to eſtabliſh it by act of parliament, and that can be extended no farther than the law of nature went before, and the law of nature doth not reach to this caſe. And the order muſt be quaſhed. *Str.* 190.

In the caſe of *Walton* and *Spark*, *E.* 7 *W. Holt* Ch. J. ſaid, that the word *children* in the ſtatute extends to *grandchildren*; becauſe there is the ſame natural affection. *Caſes of S.* 210.

But

But no caſe hath occurred, wherein the ſame hath been judicially determined. And perhaps there may be ſome doubt as to this point. Natural affection deſcends more ſtrongly than it aſcends. And it is obſervable, that whereas the ſtatute of the 39 *Eliz. c.* 3. did only enact, that *parents* and *children* ſhould mutually maintain each other, this ſtatute of the 43 *Eliz.* enlarging this branch, extends it to *grandfathers* and *grandmothers*, but doth not ſpecify *grandchildren*; by which it may ſeem, that the parliament did not intend, that the obligation ſhould extend to them.

Of every poor, old, blind, lame, and impotent perſon, or other poor perſon not able to work] *M.* 13 *W. St. Andrews Underſhaft* and *Jacob Mendez de Breta.* The defendant being a jew, had an only daughter, who was converted from judaiſm, and embraced chriſtianity. Whereupon the defendant turned her out of doors, and refuſed to allow her any maintenance. On complaint to the ſeſſions, they reciting that ſhe was the daughter of the defendant, and that he was a man able to maintain her, made an order that the defendant (being very rich) ſhould allow her 20s a month. But becauſe they did not alledge that ſhe was poor, or likely to become chargeable, the order was quaſhed. *L. Raym.* 699.

E. 1 *G. K.* and *Gulley.* It was moved to quaſh an order of ſeſſions. The order ſet out, that one *Mary Gulley* was in a poor deſtitute condition, and that her father was able to maintain her, and therefore they make an order upon him to allow her 2s 6d a week till further order. Objected, It did not appear that ſhe was lame, blind, or unable to work; ſo that though ſhe was in a deſtitute condition, it might be becauſe ſhe would not work: And upon this exception the court quaſhed the order of ſeſſions. *Foley.* 47.

Being of a ſufficient ability] *H.* 12 *An. Q.* and *Hallifax.* Order for the father in law to pay ſo much a week to his daughter in law, was quaſhed, becauſe it was not ſaid that he was of a ſufficient ability. *Caſes of S.* 52.

In that manner, and according to that rate, as by the juſtices of that county where ſuch ſufficient perſons dwell in their ſeſſions ſhall be aſſeſſed] *E.* 5 *An. Jenkins*'s caſe. An order of ſeſſions was made, that the defendant ſhall pay 2s a week towards the ſupport of his father, till that court ſhould order the contrary. Which was held good; becauſe it was *in-*

definite, and no ſet time limited: and if an eſtate happened to fall to him, they might apply to the juſtices; otherwiſe, if a time was limited. 2 *Salk.* 534.

By the juſtices of that county where ſuch ſufficient perſons dwell] Therefore if the child live in the county of *Middleſex*, and be maintained by the pariſh there, and the grandfather live in the county of *Suffolk*, the juſtices of *Middleſex* can make no order therein, but the juſtices of the county of *Suffolk* muſt make order. 2 *Bulſt.* 346.

In their ſeſſions ſhall be aſſeſſed] *T.* 9 *An.* *Q.* and *Jones.* There was an order for the grandmother to take care of her grandchildren, and by the order they ſend the grandchildren to the grandmother. By the whole court. They cannot ſend the grandchildren to the grandmother: but the juſtices ought to have made a rate upon the grandmother of ſo much a week. *Foley.* 41.

And it is ſaid, that in the order of ſeſſions it ought to appear, that the party to be relieved is become chargeable to the pariſh; for unleſs he be ſo, the pariſh has no ground of complaint. 16 *Viner.* 424. *K.* and *Tripping.*

On pain of 20*s a month* ——— *to be levied by diſtreſs*] *T.* 32 & 33 *G.* 2. *K.* and *Robinſon.* The defendant was *indicted* for refuſing to obey an order of ſeſſions, for maintaining his two infant grandchildren. It was moved in arreſt of judgment; and urged, that this is a new offence; and where a ſtatute creates a new offence, and gives a particular penalty, and a ſpecific method of recovering the ſame, that courſe ought to be purſued, and the party ſhall not be puniſhed by indictment. By lord *Mansfield* chief juſtice: The rule is certain, that where a ſtatute creates a new offence, by prohibiting and making unlawful any thing which was lawful before, and appoints a ſpecific remedy againſt ſuch new offence, by a particular ſanction and particular method of proceeding; that method muſt be purſued, and no other: But where the offence was antecedently puniſhable by a common law proceeding, and a ſtatute preſcribes a particular remedy by a ſummary proceeding; there, either method may be purſued, and the proſecutor is at liberty to proceed either at common law, or in the method preſcribed by the ſtatute, becauſe there the ſanction is cumulative, and doth not exclude the common law puniſhment. In the preſent caſe, a remedy exiſted before the ſtatute of the 43 *El.* For diſobedience to an order of ſeſſions is an offence indictable at common law.

law. So that here are two remedies; one, to proceed by way of indictment for disobeying the order, where the weekly payment is neglected or refused to be made; the other, to distrain for the 20s penalty after neglect of payment for a month. The former method has been taken in the present case: And there is no doubt but that an indictment will lie for disobeying an order of sessions. And the court were unanimously of opinion, that the judgment ought not to be arrested. *Burrow, Mansfield.* 799.

Parents running away.

2. *Whereas sometimes men run away, leaving their wives and children, and sometimes women run away, leaving their children upon the charge of the parish, although such persons have some estates which should ease the parish of their charge, in whole or in part; It shall be lawful for the churchwardens or overseers, where any such wife, child, or children shall be so left, on application to, and by warrant or order of two justices, to take and seize so much of the goods and chattels, and receive so much of the annual rents and profits of the lands and tenements of such husband, father, or mother, as such two justices shall order and direct, towards the discharge of the parish or place where such wife, child, or children are left, for the bringing up and providing for such wife, child, or children; which warrant or order being confirmed at the next quarter sessions, it shall be lawful for the justices there, to make an order for the churchwardens or overseers, to dispose of such goods or chattels by sale or otherwise, or so much of them, for the purposes aforesaid, as the court shall think fit, and to receive the rents and profits, or so much of them as shall be ordered by the said sessions, of his or her lands and tenements for the purposes aforesaid.* 5 G. c. 8. s. 1.

And the said churchwardens and overseers shall be accountable to the justices at the quarter sessions for all such money as they shall so receive. s. 2.

And further to compel husbands and parents to maintain their own families, the law hath also provided, that all persons who *run away and leave their wives or children, whereby they become chargeable to any parish or place*, shall be deemed *rogues and vagabonds*; and punished as such by the vagrant act of the 17 *G.* 2. *c.* 5.

And by the same act, All persons who *threaten* to run away and leave their wives or children to the parish, shall be deemed *idle and disorderly persons*; and shall on conviction before one justice, by confession or oath of one witness, be committed to the house of correction, there to be kept to hard labour for any time not exceeding one month.

Form of an order to ſeize the goods, and receive the rents of the lands, of parents or huſbands having run away.

Weſtmorland. { To the churchwardens and overſeers of the poor of the pariſh of —— in the ſaid county.

WHEREAS *it appears unto us whoſe names are hereunto ſet and ſeals affixed, two of his majeſty's juſtices of the peace for the ſaid county, as well upon the complaint and application of the churchwardens and overſeers of the poor of the pariſh of —— aforeſaid, in the county aforeſaid, as upon due proof upon oath before us made, that* A. O. *late of the pariſh of —— aforeſaid, in the county aforeſaid, yeoman, hath gone away from his place of abode at —— in the pariſh aforeſaid, into ſome other county or place, and hath left —— his wife, and —— their children, upon the charge of the pariſh of —— aforeſaid, the place of their laſt legal ſettlement, and that the ſaid* A. O. *hath ſome eſtate whereby to eaſe the ſaid pariſh of their ſaid charge, in whole or in part; We do hereby authorize and command you the ſaid churchwardens and overſeers of the poor of the pariſh of —— aforeſaid, to take and ſeize —— and —— and ——, and to receive the annual rents and profits of the lands and tenements of him the ſaid* A. O. *at —— aforeſaid, for and towards the diſcharge of the ſaid pariſh, for the providing for and bringing up of his ſaid wife and children: And with this warrant you are to appear, at the next quarter ſeſſions of the peace to be holden for the ſaid county, and certify then and there what you ſhall have done in the execution hereof. Given under our hands and ſeals, at —— in the ſaid county, the —— day of —— in the year ——.*

FOR the further maintenance of the poor, there are many fines and forfeitures payable to their uſe; as for ſwearing, drunkenneſs, deſtroying the game, and in many other inſtances, which are to be found under their proper titles.

And alſo parts of waſtes, woods, and paſtures may be incloſed for the growth and preſervation of timber and underwood for their relief; as is ſet forth under the title WOOD.

V. Of

V. Of the relief and ordering of the poor.

Poor to be maintained within their own pariſhes.

1. By the ſeveral ſtatutes all along, the poor were to reſort or be ſent to their own pariſhes to be relieved; and in the caſe of *Clypton* and *Raviſtock*, *E.* 11 *An.* It was adjudged as follows: There was an order reciting, Whereas *John Saunderſon* and his wife are laſt ſettled in *Clypton*; theſe are to order you the churchwardens of *Clypton*, to repair to the pariſh of *Raviſtock*, and to relieve them, being ſo ſick that they cannot be removed. By the court: The juſtices have no authority to ſend for officers out of another pariſh, but the pariſh where the poor reſide are bound to maintain them as long as they continue with them. *Caſes of S.* 49. But in the caſe above-mentioned, of *Darlington* and *Hemlington*, *H.* 17 *G.* 3. where two baſtard children, ſettled at *Darlington*, reſided with their mother as nurſe children in the pariſh of *Hemlington* where the mother was ſettled, it was determined that the pariſh, where the childrens ſettlement was, ſhould maintain thoſe children in that other pariſh.

Order to be taken therein.

2. By the 43 *El. c.* 2. *The churchwardens and overſeers, with the conſent of two juſtices* (1 Q.) *ſhall take order from time to time, for ſetting to work the children of all ſuch whoſe parents ſhall not by the ſaid churchwardens and overſeers, or the greater part of them, be thought able to keep and maintain their children; and for ſetting to work all ſuch perſons, married or unmarried, having no means to maintain them, and uſing no ordinary and daily trade; and for the neceſſary relief of the lame, impotent, old, blind, and ſuch other among them being poor, and not able to work.* ſ. 1.

And the ſaid juſtices, or one of them, ſhall ſend to the houſe of correction, or common gaol, ſuch as ſhall not employ themſelves to work, being appointed thereunto as aforeſaid. ſ. 4.

Poor, and not able to work] *M.* 3 *G. K.* and the inhabitants of *Highworth*. There was an order to pay 3s weekly to a poor perſon, by the pariſh of *Highworth*, ſo long as he ſhall continue poor. It was objected, that by the ſtatute it ought to appear that they are poor and impotent. *Parker* Ch. J. I favour theſe orders as much as I can, becauſe nobody takes care to draw them up for the poor. But it muſt be quaſhed. *Str.* 10.

On the authority of this caſe, *E.* 3 *G. K.* and *Stokegurſey*, an order was quaſhed for the ſame fault. So *E.* 4 *G. K.* and *Tipper*, an order to maintain a daughter in law. *id.*

For the neceſſary relief] *E.* 1 *G. K.* and *Colbitch.* An order of ſeſſions was made upon the overſeers of this pariſh, that they ſhould pay a *ſurgeon* his bill for curing certain poor under their care. The court ſaid, that the ſeſſions have no power to make ſuch orders; and ſo quaſhed it. 1 *Barnardiſt.* 46.

M. 6 *G.* 2. *K.* and *Woodſterton.* An order was made by two juſtices upon the officers of the pariſh of *Woodſterton*, for paying 5 l, upon account of a poor inhabitant of that pariſh when he was in gaol, and likewiſe for paying a ſurgeon's bill that was due upon his account; which order was confirmed at the ſeſſions. It was moved to quaſh theſe orders. And upon ſhewing cauſe, it was urged, that the juſtices have only power to order pariſh officers to relieve a poor inhabitant where it is fit he ought to be relieved. But in the preſent caſe the pariſh officers have actually given the party relief. They employed a ſurgeon, and a nurſe, to take care him. The ſurgeon and nurſe have a proper remedy by way of action againſt the officers; and the juſtices have no pretence to interfere in this matter. And the court were of opinion that theſe orders ſhould be quaſhed. 2 *Barnardiſt.* 207, 247.

Setting up trades.

3. By the 3 *C.* 4. *The churchwardens and overſeers may, by the conſent of two juſtices* (1 Q.) *within their reſpective limits, wherein ſhall be more juſtices than one; and where no more ſhall be than one, with the aſſent of that one juſtice, ſet up and uſe any trade, myſtery or occupation, only for the ſetting on work and better relief of the poor.* ſ. 22.

Erecting cottages.

4. *The churchwardens and overſeers, or the greater part of them, by the leave of the lord of the manor, whereof any waſte or common within the pariſh is parcel, and on agreement with him made in writing, under his hand and ſeal; or otherwiſe, according to any order to be ſet down by the juſtices in ſeſſions, by like leave and agreement of the lord in writing under his hand and ſeal, may build in fit and convenient places of habitation in ſuch waſte or common, at the charge of the pariſh, or otherwiſe of the hundred or county as aforeſaid, to be rated and gathered in manner before expreſſed, convenient houſes of dwelling for the ſaid impotent poor.* 43 El. c. 2. ſ. 5.

Overſeers may contract for the maintenance and employment of the poor.

5. *It ſhall be lawful for the churchwardens and overſeers, in any pariſh, townſhip, or place, with the conſent of the major part of the pariſhioners or inhabitants, in veſtry, or other pariſh or publick meeting for that purpoſe aſſembled, or of ſo many of them as ſhall be ſo aſſembled, upon uſual notice thereof firſt given, to purchaſe or hire any houſe or houſes, in the ſame pariſh, townſhip, or place, and to contract with any perſon or perſons for the lodging, keeping, maintaining, and employing any or all ſuch poor in their reſpective pariſhes, townſhips, or places,*

places, as ſhall deſire to receive relief or collection, and there to keep, maintain, and employ all ſuch poor perſons, and take the benefit of the work, labour, and ſervice of any ſuch poor perſons, who ſhall be kept or maintained in any ſuch houſe or houſes, for the better maintainance and relief of ſuch poor perſons, who ſhall be there kept or maintained. And if any poor perſon ſhall refuſe to be lodged, kept, or maintained, in ſuch houſe or houſes, he ſhall be put out of the pariſh book, and ſhall not be intitled to receive relief from the churchwardens and overſeers. 9 G. c. 7. ſ. 4.

M. 7 *G.* 3. *K.* and *Carliſle.* The defendant was indicted for diſobeying an order of ſeſſions. The caſe was, *Jane Carr* the pauper, having been delivered of two baſtard children, was taken into the poor houſe of the pariſh of *St. Mary*'s in *Carliſle*, which had been there eſtabliſhed according to the 9 *G. c.* 7. There ſhe and her children were maintained for a year and an half. Then the pariſh officers agreed to allow her one ſhilling a week, towards the maintenance of herſelf and children. After ſix months they refuſed to continue the payment, but offered to take her and her children again into the poor houſe. She prayed them to take one child, and ſaid ſhe would take care of the other. That being refuſed, ſhe offered to take a ſixpence a week. But the pariſh officers perſiſted in giving her no relief, unleſs ſhe would come again into the poor houſe. Whereupon ſhe applied to the general quarter ſeſſions for the county of *Cumberland*; who made an order on the churchwardens and overſeers to pay her one ſhilling a week, towards the maintenance of herſelf and her two baſtard children, until further order. She ſerved the defendant, being one of the overſeers, with the order; and demanded payment, which he refuſed, but at the ſame time offered (as he had done ſeveral times before the obtaining the ſaid order) to take her and her children into the poor houſe. The queſtion reſerved at the aſſizes for the opinion of the judges was, Whether under theſe circumſtances the defendant was by law impowered to refuſe payment of ſuch weekly allowance? And the caſe being laid before the judges, they were all of opinion, upon conſidering the words of the ſtatute, that under the circumſtances of this caſe, the defendant was by law impowered to refuſe payment of ſuch weekly allowance.

M. 11 *G.* 3. *K.* againſt *Winſhip* and *Grunwell.* The overſeers of the poor of the townſhip of *Corbridge* in the county of *Northumberland.* In the ſaid townſhip a regular poor houſe had been eſtabliſhed; and the ſeveral perſons, who

who received allowances from the ſaid townſhip, had one month's notice given them to repair to the ſaid poor houſe, to be maintained and provided for therein; and that from the expiration of the ſaid month, the allowance to the ſaid ſeveral perſons from the ſaid townſhip ſhould be no longer paid. Afterwards, at a general quarter ſeſſions of the peace holden in and for the ſaid county, an order was made in the words following; that is to ſay, *Margaret Richlieu* having an allowance of 2 s a week payable to her out of the townſhip of *Corbridge*, of which the ſum of 6 l 4 s od is now in arrear, it is ordered, that the ſame be immediately paid to her: And it is alſo ordered, that the ſaid allowance of 2 s a week be continued to be paid by the ſaid townſhip of *Corbridge* to the ſaid *Margaret Richlieu*; the ſaid townſhip appearing, and not ſhewing ſufficient cauſe to the contrary. The overſeers refuſed to pay the ſame, inſiſting that ſhe ſhould go into the poor houſe. Upon which they were indicted. And a verdict was given againſt the defendants the overſeers, ſubject to the opinion of the court of king's bench. Upon hearing the cauſe, the court thought the general queſtion to be of vaſt conſequence to the ſyſtem of the poor laws: And lord *Mansfield* expreſſed an approbation of work houſes. But they gave no opinion upon the merits; holding the ſeſſions order to be bad and illegal upon the face of it: The ſeſſions cannot make ſuch an original order. And judgment was entred for the defendants. *Bur. Mans.* 2677.

H. 20 *G.* 3. *K.* and *North Shields.* By order of a juſtice, the pariſh officers of the townſhip of *North Shields* were directed to pay to *Anne Irwin* of that townſhip, wife of *Thomas Irwin*, the ſum of 2 s 6 d weekly, until ſuch time as they ſhould be otherwiſe ordered, for the ſupport of her three children by her ſaid huſband; one aged ſix years, one three, and one fourteen months. The pariſh officers, appealed to the quarter ſeſſions, where the order was confirmed, and a ſpecial caſe ſtated to the following effect: There was, at the time of making the order, within the townſhip, a poor houſe, eſtabliſhed according to the ſtatute 9 *G.* *c.* 7. into which the pariſh officers were willing to receive the pauper, with her three children, and offered ſo to do; but ſhe refuſed to go with her ſaid three children, who were of the ages mentioned in the order. She had another child of eight years of age, for whom ſhe did not ſeek relief; neither did ſhe ſeek relief for herſelf, nor was there any order for her. Her huſband was a mariner, and priſoner in France, and his ſaid wife not able to provide for the ſaid three children. The caſe concluded, that theſe children,

children, being nurſe children, the opinion of the court was, that they ought not to be ſeparated from their mother; and that the mother, not ſeeking relief herſelf, was not compellable to go into the work houſe.—Upon a *certiorari*, and a rule to ſhew cauſe why both the orders ſhould not be quaſhed, it was argued in ſupport of the rule for quaſhing them, that the ſtatute of 9 *G. c.* 7. *ſ.* 4. was to ſecure to pariſhes a benefit from the labour of perſons aſking relief. If parents receive aſſiſtance for the maintenance of their children, *that* in truth is a relief to them. The caſe therefore ſtates improperly, that the wife had not aſked relief for herſelf; ſhe did *virtually*, by aſking it for her children, whom ſhe, if able, was bound to maintain. And the caſe of *K.* and *Carliſle* was relied on as in point. On the other ſide, it was contended, that as the mother had not aſked relief for herſelf, and the order was only for the ſupport of her children; ſhe was willing to let *them* go into the work houſe, and altho' nurſe children cannot be ſeparated by any compulſory order from their mother, ſhe may by her conſent permit the ſeparation if ſhe thinks it for their advantage. In the caſe of *K.* and *Carliſle*, the relief aſked, and granted by the order, was partly *perſonal*, and therefore it was diſtinguiſhable from this caſe, and within the ſtatute.——Lord *Mansfield* was not preſent during this part of the argument. *Willes*, juſtice, ſaid this was a humane order, and he wiſhed to ſupport it. He did not think the words of the act in the way, and inclined to adopt the diſtinction made by the counſel between this caſe and that of *K.* and *Carliſle*. *Aſhurſt*, juſtice, thought the act extends to the preſent caſe: That maintenance for the children was relief to the mother. There might be great inconvenience if the court were to adopt the other conſtruction. One object of the ſtatute was to encourage induſtry, by holding out the diſgrace of going into a workhouſe; and if parents could obtain a maintenance for their children without being compellable to go to the work houſe, idleneſs would be thereby promoted among artificers and manufacturers. *Buller*, juſtice, on the contrary, thought the diſtinction between this caſe and that of *K.* and *Carliſle* to be clear. The act was meant in eaſe of pariſhes, but the effect would be quite the reverſe, if, when one of a numerous family wants relief, the whole muſt go to the pariſh work houſe; and, on the other hand, that the pariſh is not intitled to the labour of a whole family, becauſe one of them might want relief.—The caſe ſtood over for further argument, *Willes* juſtice expreſſing a wiſh that it might be compromiſed. And now he delivered the judgment of the

the court: We think it unneceſſary to give an opinion on the queſtion which has been argued in this caſe, becauſe I and my two brothers are ſatisfied that no appeal lies from an order of maintenance. The ſtatute 3 *W.* *c.* 11. *ſ.* 11. gives a concurrent juriſdiction, in the making orders for the relief of the poor, in or out of ſeſſions, and doth not authorize an appeal. The act of 9 *G.* *c.* 7. made no alteration in this reſpect. The reaſon for not giving an appeal is, that the pauper might ſtarve while the cauſe was in ſuſpence. We have ſpoken to ſeveral gentlemen very converſant in ſeſſions law, and none of them ever heard of ſuch an appeal.—And the order of ſeſſions was quaſhed (becauſe they had no juriſdiction), and the original order affirmed. *Douglas.* 316.

[Upon this the Reporter obſerves, that the words of the 3 *W.* *c.* 11. are "by authority under the hand of one "juſtice reſiding within the pariſh, or (if none be there "dwelling) in the parts near or next adjoining, *or by or-* "*der of the juſtices in ſeſſions.*" This, he ſays, ſhould ſeem muſt mean *by order of the court of quarter ſeſſions*, not of juſtices, as individuals, when they happen to meet at the quarter ſeſſions. Therefore he makes a query concerning the caſe of *K.* againſt *Winſhip* and *Grunwell*, where the court is ſtated to have held, that the ſeſſions could not make an original order of maintenance. – Unto which it may be added, with reſpect to this laſt caſe of *North Shields*, that the great fundamental ſtatute of 43 *El.* *c.* 2. *ſ.* 6. enacts, that "if any perſon ſhall find himſelf "aggrieved by any thing done by the churchwardens and "overſeers, or by the juſtices, in relation to the relief of "the poor, he may appeal to the general quarter ſeſſions, "whoſe order therein ſhall be final." Which, by the rule that acts *in pari materia* are to be taken together, and conſidered as one entire act, may ſeem to include this caſe concerning the order of maintenance. The *Carliſle* caſe abovementioned was upon an original order at ſeſſions, in which the juriſdiction was not objected to, but the cauſe was determined on the real merits. The caſe of *K.* againſt *Winſhip* and *Grunwell* alſo was upon an original order of ſeſſions, which order the report ſays was quaſhed, becauſe the court was of opinion that the ſeſſions had no power to make ſuch order. This preſent caſe of *North Shields* was on *appeal* againſt an order of a juſtice out of ſeſſions, and in this caſe of appeal likewiſe the court was of opinon that the ſeſſions had no juriſdiction. From which two laſt caſes it ſeems to follow, that an order of maintenance by a private juſtice out of ſeſſions is abſolutely concluſive; which

imports a power in this reſpect not uſual in other like caſes; eſpecially as ſuch juſtice is required by the ſtatute to be an inhabitant of the pariſh if any ſuch be there reſiding, and conſequently in all probability eſſentially intereſted in the poor rate. As to the matter of *practice*, it is certain, that nothing is more common at the ſeſſions, than applications for the maintenance of poor perſons, as well by original motion, as by way of appeal from the orders of private juſtices. In ſome places this makes up almoſt half the buſineſs of the ſeſſions, even to a degree of ridicule among the unthinking part of mankind; as if magiſtrates could be better employed than in relieving the miſeries of the diſtreſſed. The reaſon that has been ſometimes alledged againſt removing the poor rate into the courts at *Weſtminſter*, leſt the poor might ſtarve before the cauſe ſhould be determined, doth not hold with regard to appeals againſt orders of maintenance. The juſtices order takes effect immediately, and continues in force till altered by other legal authority. The uſual way is, for the juſtices to order the overſeer to pay to the pauper ſo much weekly or otherwiſe, *until he ſhall be otherwiſe ordered according to law to forbear the ſaid allowance*, or, more generally, *till further order*. And this, if not acquieſced in, brings on an appeal to the ſeſſions; where the court enlarges, mitigates, or takes off the charge, as they ſhall ſee cauſe.]

Two or more places may join.

6. *And where any pariſh or townſhip ſhall be too ſmall to purchaſe or hire ſuch houſe or houſes, it ſhall be lawful for two or more ſuch pariſhes, townſhips, or places, with the conſent of the major part of the pariſhioners or inhabitants of their reſpective pariſhes, townſhips, or places, in veſtry or other pariſh or publick meeting for that purpoſe aſſembled, or of ſo many of them as ſhall be ſo aſſembled, upon uſual notice thereof firſt given, and with the approbation of any juſtice of the peace dwelling in or near any ſuch pariſh, townſhip, or place, ſignified under his hand and ſeal, to unite in purchaſing, hiring, or taking ſuch houſe, for the lodging, keeping, and maintaining of the poor of the ſeveral pariſhes, townſhips, or places ſo uniting, and there to keep, maintain, and employ the poor of the reſpective pariſhes, townſhips, or places ſo uniting, and to take and have the benefit of the work, labour, or ſervice of any poor there kept and maintained, for the better maintenance and relief of the poor there kept, maintained, and employed; and if any poor in the reſpective pariſhes, townſhips, or places ſo uniting, ſhall refuſe to be lodged, kept, and maintained in the houſe hired or taken for ſuch uniting pariſhes, townſhips,*

townſhips, or places, he ſhall be put out of the collection book, and not intitled to aſk relief:

And it ſhall be lawful for the churchwardens and overſeers of any pariſh, townſhip, or place, with the conſent of the major part of the pariſhioners or inhabitants of the ſaid pariſh, townſhip, or place, where ſuch houſe or houſes ſhall be purchaſed or hired for the purpoſes aforeſaid, in veſtry or other pariſh or publick meeting for that purpoſe aſſembled, or of ſo many of them as ſhall be ſo aſſembled, upon uſual notice thereof firſt given, to contract with the churchwardens and overſeers of any other pariſh, townſhip, or place, for the lodging, maintaining, or employing of any poor perſon or perſons of ſuch other pariſh, townſhip, or place, as to them ſhall ſeem meet; and if any poor perſon of ſuch other pariſh, townſhip, or place, ſhall refuſe to be lodged, maintained, and employed in ſuch houſe or houſes, he ſhall be put out of the collection book, and not be intitled to have relief: Provided, that no poor perſon, his apprentice, or child, ſhall acquire a ſettlement in the pariſh, town, or place, to which he ſhall be removed by virtue of this act; but his and their ſettlement ſhall be and remain, in ſuch pariſh, town, or place, as it was before removal. 9 G. c. 7. ſ. 4.

Perſons relieved to be entred in a book.

7. *There ſhall be provided and kept in every pariſh, a book wherein the names of all perſons who receive collection ſhall be regiſtred, with the day and year when they were firſt admitted to have relief, and the occaſion which brought them under that neceſſity, and yearly in* Eaſter *week, or as often as ſhall be thought convenient, the pariſhioners ſhall meet in the veſtry or other uſual place of meeting in the pariſh, before whom the book ſhall be produced, and all perſons receiving collection to be called over, and the reaſons of their taking relief examined, and a new liſt made and entred of ſuch perſons as they ſhall think fit and allow to receive collection.* 3 W. c. 11. ſ. 11.

No others to be relieved, but by order of the juſtices.

8. *And no other perſon ſhall be allowed to receive collection at the charge of the pariſh, but by authority under the hand of one juſtice reſiding within ſuch pariſh, or (if none be there dwelling) in the parts near or next adjoining, or by order of the juſtices in ſeſſions, except in caſes of peſtilential diſeaſes, plague, or ſmall pox, for ſuch families only as ſhall be therewith infected.* 3 W. c. 11. ſ. 11.

And no juſtice ſhall order relief to any poor perſon, until oath be made before him of ſome matter, which he ſhall judge to be a reaſonable cauſe for having ſuch relief; and that the ſame perſon had by himſelf, or ſome other, applied for relief to the pariſhioners at ſome veſtry or other public meeting, or to two of the overſeers, and was by them refuſed to be relieved; and until ſuch juſtice hath ſummoned two of the overſeers to ſhew

cauſe

cauſe why ſuch relief ſhould not be given, and the perſon ſo ſummoned hath been heard or made default to appear. 9 G. c. 7. ſ. 1.

And the perſon whom ſuch juſtice ſhall think fit to order to be relieved, ſhall be entred in ſuch book, as one of thoſe who is to receive collection, as long as the cauſe for ſuch relief continues, and no longer. And no officer ſhall (except upon ſudden and emergent occaſions) bring to the account of the pariſh, any money he ſhall give to any poor perſon who is not regiſtred in ſuch book, as a perſon intitled to receive collection, on pain of 5 *l, by diſtreſs, by warrant of two juſtices, who ſhall have examined into and found him guilty of ſuch offence; which ſaid ſum ſhall be applied to the uſe of the poor by direction of the juſtices.* 9 G. c. 7. ſ. 2.

Perſons relieved to be badged.

9. Moreover, *Every ſuch perſon as ſhall be upon the collection, and receive relief of any pariſh or place, and the wife and children of any ſuch perſon cohabiting in the ſame houſe (ſuch child only excepted, as ſhall be by the churchwardens and overſeers permitted to live at home, in order to attend an impotent and helpleſs parent) ſhall upon the ſhoulder of the right ſleeve of the uppermoſt garment, in an open and viſible manner, wear a large* Roman P, *together with the firſt letter of the name of the pariſh or place, whereof ſuch poor perſon is an inhabitant, cut either in red or blue cloth, as by the churchwardens and overſeers ſhall be directed: And if any ſuch poor perſon ſhall neglect or refuſe to wear any ſuch badge or mark, it ſhall be lawful for one juſtice to puniſh ſuch offender, either by ordering his allowance to be abridged, ſuſpended, or withdrawn, or otherwiſe by committing him to the houſe of correction, to be whipt and kept to hard labour, not exceeding* 21 *days; And if any churchwarden or overſeer ſhall relieve any ſuch poor perſon, not wearing ſuch badge, and be thereof convicted on oath of one witneſs before one juſtice, he ſhall forfeit* 20 *s, by diſtreſs, half to the informer and half to the poor.* 8 & 9 W. c. 30. ſ. 2.

Spirituous liquors not to be uſed in workhouſes.

10. By the 24 G. 2. c. 43. *No ſpirituous liquors ſhall be ſold or uſed in any workhouſe, or houſe of entertainment for pariſh poor*; as is ſet forth more at large, in the article relating to ſpirituous liquors, under the title Excise.

THE above-mentioned ſtatute of the 9 *G. c.* 7. hath been very beneficial in practice; but the matter ſeemeth at length to have been carried too far; the overſeers in many places having found out a method of contracting with ſome obnoxious perſon, of ſavage diſpoſition, for the maintenance of their poor: not with any intention of the poor being better provided for, but to hang over them *in terrorem*, if they will not be ſatisfied with the pittance

which the overſeers think fit to allow them. And one ſuch taſkmaſter oftentimes undertakes for the poor of ſeveral pariſhes or townſhips. But the juſtices have power, by with-holding their aſſent, to prevent any bad uſe being made of this kind of traffick.

Oath of a poor perſon wanting maintenance.

A. P. *of* —— *in the pariſh of* —— *in the county of* —— *maketh oath, that he is very poor and impotent, and not able to provide for himſelf and his family, and that on* —— *laſt he did apply for relief to the pariſhioners of the ſaid pariſh at a veſtry* (or other publick) *meeting*, [or, to two of the overſeers of the poor of the ſaid pariſh] *and was by them refuſed to be relieved.*

A. P.

Taken and made before me one of his majeſty's juſtices of the peace for the ſaid county, the —— *day of* ——. J. P.

Warrant thereupon to ſummon the overſeers.

Weſtmorland. { To the conſtables of —— in the pariſh of —— in the ſaid county, and to every of them.

WHEREAS A. P. *of your pariſh hath this day made oath before me* —— *one of his majeſty's juſtices of the peace in and for the ſaid county, that he the ſaid* A. P. *is very poor and impotent, and not able to provide for himſelf and his family; and that he the ſaid* A. P. *did on* —— *laſt apply to the pariſhioners of your ſaid pariſh at a veſtry* (or other publick) *meeting* [or, *to* A. B. *and* C. D. *two of the overſeers of the poor of the ſaid pariſh*] *and was by them refuſed to be relieved: Theſe are therefore to require you in his ſaid majeſty's name, to ſummon two of the overſeers of the poor of the ſaid pariſh, to appear before me on* —— *next at the houſe of* —— *in* —— *in the ſaid county, at the hour of* —— *in the forenoon of the ſame day, to ſhew cauſe why relief ſhould not be given to the ſaid* A. P. *And be you then there with this precept, to certify what you ſhall have done in the execution hereof. Given under my hand and ſeal the* —— *day of* —— *in the* —— *year* ——.

Order

Order for maintenance.

Weſtmorland. WHEREAS A. P. *of* —— *in the pariſh of* —— *in the ſaid county of* —— *hath made oath before me* —— *one of his majeſty's juſtices of the peace for the ſaid county, that he the ſaid* A. P. *is very poor and impotent, and not able to work; and that he the ſaid* A. P. *did on* —— *laſt apply for relief to the pariſhioners of the ſaid pariſh of* —— *at a veſtry* (or, *publick*) *meeting,* [or, *to* A. B. *and* C. D. *two of the overſeers of the poor of the ſaid pariſh*] *and was by them refuſed to be relieved; And whereas* A. B. *and* C. D. *overſeers of the poor of the ſaid pariſh, have been duly ſummoned by me, to ſhew cauſe why relief ſhould not be given to the ſaid* A. P. *and have appeared before me in purſuance of ſuch ſummons, but have not made any ſufficient cauſe to appear as aforeſaid* [or, *but have made default to appear before me according to ſuch ſummons:*] *I do therefore hereby order the churchwardens and overſeers of the poor of the ſaid pariſh, or ſome of them, to pay unto the ſaid* A. P. *the ſum of* —— *weekly and every week, for and towards his ſupport and maintenance, until ſuch time as they ſhall be otherwiſe ordered according to law to forbear the ſaid allowance. Given under my hand and ſeal at* —— *in the ſaid county, the* —— *day of* —— *in the* —— *year* ——.

Contract for maintenance.

AT *a publick meeting of the inhabitants of the pariſh of* —— *in the county of* —— *for that purpoſe aſſembled upon uſual notice thereof firſt given; it is contracted by and with the conſent of the major part of the ſaid inhabitants ſo aſſembled as aforeſaid, between* A. B. *and* C. D. *churchwardens, and* E. F. *and* G. H. *overſeers of the poor of the ſaid pariſh, of the one part, and* A. M. *of* —— *in the ſaid pariſh, yeoman, of the other part; That he the ſaid* A. M. *ſhall and will during the ſpace of one whole year, to commence from* —— *next enſuing, at his own proper coſts and charges, in the houſe in which he now dwelleth, find, provide, and allow unto all ſuch poor people, as ſhall be lawfully intitled to relief and maintenance from the ſaid pariſh, and ſhall be brought unto him by the churchwardens or overſeers of the poor aforeſaid, or any of them, or by their or any of their ſucceſſors for the time being, ſufficient lodging, meat, drink, clothing, employment, and other things neceſſary for their keeping and maintenance: And that in conſideration thereof the ſaid church-*

wardens and overſeers of the poor, and their ſucceſſors reſpectively, ſhall pay or cauſe to be paid to the ſaid A. M. *the ſum of —— in equal proportions —— The ſaid* A. M. *to have moreover and take unto himſelf the benefit of the ſaid poor people's work, labour, and ſervice during the ſaid term. In witneſs whereof the parties to theſe preſents have hereunto ſet their hands, the ——— day of ———.*

It may perhaps be requiſite to inſert a clauſe more particularly with reſpect to the article of *clothing*; ſetting forth in what condition they ſhall go, and in what condition be delivered back again.

As alſo, if they ſhall *die*; who ſhall be at the expence of burying them, and the like.

As alſo, if they ſhall be *refractory* or ungovernable; who ſhall be at the charge of ſending them to the houſe of correction, or otherwiſe reducing them to good behaviour.

And other clauſes as there may be occaſion.

If two pariſhes or townſhips ſhall join in ſuch contracting, it will be neceſſary to inſert in the contract, the conſent of a juſtice of the peace; as thus,

——— *by and with the conſent of the major part of the ſaid inhabitants ſo aſſembled as aforeſaid reſpectively, and alſo by and with the conſent of* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, dwelling in the ſaid pariſh of* ——— [or, *near to the ſaid pariſhes, or townſhips of* ———]

And the aſſent of the ſaid juſtice may be indorſed thereon, as follows:

I ——— *eſquire, one of his majeſty's juſtices of the peace for the within-mentioned county of* ——— *and dwelling in the within mentioned pariſh of* ——— [or, *near to the within mentioned pariſhes, or townſhips of* ———] *do conſent unto, allow, and approve of the within written contract. Given under my hand and ſeal the* ——— *day of* ——.

VI. Of the overſeers account.

Account. 1. By the 43 *El. c.* 2. *The churchwardens and overſeers ſhall within four days after the end of their year, and other overſeers nominated, make and yield up to two juſtices* (1 Q.) *a true and perfect account of all ſums by them received, or rated and aſſeſſed and not received, and alſo of ſuch ſtock as ſhall be*

be in their hands, or in the hands of any of the poor to work, and of all other things concerning their office: And ſuch ſums of money as ſhall be in their hands, ſhall pay and deliver over to their ſucceſſors: And the ſubſequent churchwardens or overſeers, by warrant from two ſuch juſtices, may levy by diſtreſs and ſale of the offender's goods, the ſaid ſums or ſtock which ſhall be behind on any account to be made; and in defect of ſuch diſtreſs, two ſuch juſtices may commit him to the common gaol, there to remain without bail or mainprize, until payment of the ſaid ſum and ſtock: And alſo any ſuch two juſtices may commit to the ſaid priſon, every one of the ſaid churchwardens and overſeers, which ſhall refuſe to account, there to remain without bail or mainprize, until he have made a true account, and ſatisfied and paid ſo much as upon the ſaid account ſhall be remaining in his hands. ſ. 2. 4.

And by the 17 *G.* 2. *c.* 38. It is enacted as follows: *The churchwardens and overſeers ſhall yearly, within fourteen days after other overſeers ſhall be appointed, deliver in to the ſucceeding overſeers a juſt account in writing, fairly entred in a book to be kept for that purpoſe, and ſigned by them, of all ſums by them received, or rated and not received; and alſo of all materials that ſhall be in their hands, or in the hands of any of the poor to be wrought, and of all money paid by ſuch churchwardens and overſeers ſo accounting, and of all other things concerning their office; and ſhall alſo pay and deliver over all ſums of money and other things, which ſhall be in their hands, to the ſucceeding overſeers; which account ſhall be verified by oath before one juſtice, who ſhall ſign and atteſt the taking of the ſame, at the foot of the account, without fee; and the ſaid books ſhall be preſerved by the churchwardens and overſeers, in ſome public or other place within the pariſh or townſhip; and they ſhall permit any perſon aſſeſſed, or liable to be aſſeſſed, to inſpect the ſame at all ſeaſonable times, paying 6 d for ſuch inſpection; and ſhall upon demand give copies at the rate of 6 d for every three hundred words, and ſo in proportion. And if they ſhall refuſe or neglect to make and yield up ſuch account, verified as aforeſaid, within ſuch time, or ſhall refuſe or neglect to pay over the money and other things in their hands; any two juſtices may commit them to the common gaol, till they ſhall have given ſuch account, or ſhall have paid and yielded up ſuch money and other things in their hands as aforeſaid.* 1. 1, 2.

Churchwardens] *M.* 15 *C.* 2. *K.* and *Pecke.* The churchwarden was committed for refuſing to account for all monies received and diſburſed by him, and of all ſuch things as concerned his office. But upon an *habeas corpus*

he was discharged; for if he be committed as overseer, it must be so expressed in the *mittimus*, although to be overseer be annexed to the office of churchwarden, for the justices have no power over him as churchwarden. 1 *Keb.* 574.

Such money as shall be in their hands, shall pay and deliver over to their successors] *M.* 8 *G.* 2. *K.* and the justices of *Somersetshire*. *Mandamus* to the justices, to grant a warrant for levying 301 17 s 11d being the balance of the last overseers account in their hands. They return, that true it is there was such a balance, but that the vestry had ordered them to retain it, and employ an attorney to sue for some charity money, and get it laid out for the benefit of the poor; that one *Young* was so employed, and the balance exhausted in fees, and that the overseers had engaged to pay *Young*; and for that cause they had refused to grant the warrant. But by the court: There must go a peremptory *mandamus*; for the statute says, the balance shall be paid over to the new overseers, under a penalty; and it is not in the power of the vestry to dispense with the statute. *Str.* 992.

Until he have made a true account] *T.* 2 *W.* *The mayor and churchwardens of Northampton.* The mayor committed the churchwardens, as overseers of the poor, for refusing to account, and the warrant of commitment concluded, *until they be duly discharged according to law.* The court held the commitment void; because the warrant ought to conclude, *there to remain until they shall account*, as the statute doth appoint. And the difference is, where a man is committed as a criminal, and where only for contumacy; for in the first case, the commitment must be, until discharged according to law; but in the latter, until he comply and perform the thing required; for in that case, he shall not lie till a sessions, but shall be discharged upon performance of his duty. *Carth.* 152.

Which account shall be verified by oath before one justice] *H.* 19 *G.* 2. *K.* and the *justices of Middlesex.* A *mandamus* was moved for, to be directed to the justices to swear *William Carr* late overseer of the poor of the parishes of *St. Andrew* and *St. George* the martyr, to the truth of his accounts, upon an affidavit made by *Carr* that he had delivered in an account to the justices, and was ready to swear to the truth thereof, but that they had refused to swear him. On behalf of the justices, it was objected, that the account consisted of gross sums, and that the justices asked

him ſome queſtions touching the particulars, which he refuſed to anſwer, and therefore they refuſed to ſwear him to his account. By the court: A *mandamus* is a matter of courſe, and we cannot refuſe to grant it. If the juſtices have any legal objection, they may return it upon the *mandamus*. 1 Wilſon. 125.

And if any perſon thinks himſelf aggrieved by the account, he may have his remedy by appeal.

And the ſaid books ſhall be preſerved by the churchwardens and overſeers] *T.* 24 & 25 *G.* 2. *K.* & *Clapham.* A *mandamus* was granted to oblige the old overſeer to deliver over the books of the poor rates to the new overſeer; for, by the court: They are public books, and ought to be delivered over by one overſeer to another, that all the pariſhioners may have acceſs to them, and the overſeer and churchwarden for the time being ought to have the cuſtody thereof. 1 *Wilſon.* 305.

Overſeer removing or dying.

2. *And if any overſeer ſhall remove, he ſhall before his removal, deliver over, to ſome churchwarden or other overſeer, his accounts, verified as aforeſaid, with all aſſeſſments, books, papers, money, and other things concerning his office; and if any overſeer ſhall die, his executors or adminiſtrators ſhall within* 40 *days after his deceaſe, deliver over all things concerning his office to ſome churchwarden or other overſeer, and ſhall pay out of the aſſets all money remaining due, which he received by virtue of his office, before any of his other debts are paid.* 17 G. 2. c. 38. ſ. 3.

Appeal againſt the account.

3. By the 43 *El.* c. 2. *If any perſon ſhall find himſelf aggrieved by any act done by the ſaid overſeers or juſtices; he may appeal to the general quarter ſeſſions, whoſe order therein ſhall bind all parties.*

And this power of appealing generally, doth not ſeem to be taken away by the ſtatute here next following; but the ſame being only in the affirmative, it ſeemeth that they may both ſtand together, and that the appeal may be upon either of the ſtatutes.

And upon this ſtatute of the 43 *El.* the appeal is not limited to the next ſeſſions, but may be at any time after.

The other ſtatute abovementioned, with regard to this matter, is as follows: *If any perſon ſhall have any material objection to ſuch account or any part thereof, he may, giving reaſonable notice, appeal to the next ſeſſions; but if reaſonable notice be not given, then they ſhall adjourn the appeal to the next ſeſſions after; and the court may award coſts to either party, as in caſes of ſettlement by the* 8 & 9 *W.* 17 G. 2. c. 38. ſ. 4.

So that here is a power to award coſts, if the appeal is to the next ſeſſions; but if the appeal is upon the 43 *El.* and not to the next ſeſſions, there is no power in ſuch caſe to award coſts.

And by the ſaid ſtatute of the 17 *G.* 2. *c.* 38. *In all corporations or franchiſes, which have not four juſtices, perſons aggrieved may appeal, if they think fit, to the next county ſeſſions.* ſ. 5.

M. 4 *An. Q.* and *Hedges.* On appeal upon the ſtatute of the 43 *El.* againſt the allowance of the account by two juſtices, the ſeſſions ordered the overſeer to pay ſo much over, which they adjudged to be in his hands; and for not doing this, they committed him. But by the court: They ſhould have levied the arrears by diſtreſs and ſale, and in default of diſtreſs have committed him: for the ſeſſions muſt execute their judgment, in the ſame manner as the two juſtices muſt do. 9 *Salk.* 533.

T. 7 *G. K.* and *Bartlett.* An order made at the ſeſſions relating to accounts of overſeers, was moved to be quaſhed, becauſe it did not appear that the accounts had been before the juſtices out of ſeſſions, and they cannot come *per ſaltum* to the ſeſſions. On the other ſide it was ſaid, that it appeared there was an allowance, for the appeal is ſaid to be againſt the diſburſements *and the allowance thereof*, which the court will preſume was regular. But by the court: It doth not follow, that this was an allowance by two juſtices, for the pariſh might do it; and therefore for want of juriſdiction this order muſt be quaſhed. *Str.* 983.

Allowance of the account.

Weſtmorland. PERUSED *and allowed (having been firſt ſigned and verified on oath by* A. B. *and* C. D. *churchwardens, and* E. F. *and* G. H. *overſeers of the poor) by me one of his majeſty's juſtices of the peace in and for the ſaid county, the —— day of ——.* J. P.

VII. Penalty of overſeers for the neglect of their duty.

1, In general, overſeers being negligent in their office, ſhall forfeit for every default 20s to the poor, to be levied by one of the churchwardens or overſeers, by warrant of two juſtices (1 *Q.*) by diſtreſs; or in default thereof, any two ſuch juſtices may commit the offender to the common

gaol, there to remain without bail or mainprize, till the ſaid forfeiture ſhall be paid. 43 *El. c.* 2. *ſ.* 2. 11.

2. And by the 17 *G.* 2. *c.* 38. Any pariſh officer neglecting to obey any directions of that act, being convicted thereof on oath before two juſtices, in two calendar months after the offence committed, ſhall forfeit not exceeding 5l, nor leſs than 40s, to the poor, by diſtreſs. *ſ.* 14.

3. And in all actions to be brought in the courts of *Weſtminſter*, or at the aſſizes, for the recovery of any ſum miſpent or taken to their own uſe by the churchwardens or overſeers, the evidence of the pariſhioners, other than ſuch as receive alms, ſhall be admitted. 3 *W.* *c.* 11. *ſ.* 12.

VIII. Indemnity of overſeers in performance of their duty.

1. By the 7 *J.* *c.* 5. If any action ſhall be brought againſt any *juſtice of the peace* or *conſtable* (and by 21 *J.* *c.* 7. againſt any *churchwarden* or *overſeer of the poor*, or other perſon who in their aid or by their commandment ſhall do any thing concerning their offices), he may plead the general iſſue, and give the ſpecial matter in evidence; and if a verdict ſhall paſs for him, or the plaintiff ſhall be nonſuit or ſuffer diſcontinuance, he ſhall have double coſts. And ſuch action ſhall be laid in the county where the fact was committed, and not elſewhere.

2. By the 43 *El.* *c.* 2. Perſons ſued for any thing done on that act, may plead the general iſſue, and give the ſpecial matter in evidence; and if a verdict be found for the defendant, or the plaintiff be nonſuit, the defendant ſhall have treble damages with coſts, to be aſſeſſed by the jury in caſe of the iſſue tried, or by a writ to inquire of the damages in caſe the plaintiff is nonſuit. *ſ.* 19.

3. And by the 24 *G.* 2. *c.* 44. No action ſhall be brought againſt any *conſtable*, *headborough*, or *other officer*, or any perſon acting by his order, and in his aid, for any thing done in obedience to the warrant of a juſtice of the peace, until demand hath been made, or left at the uſual place of his abode, by the party, or by his attorney, in writing, ſigned by the party demanding the ſame, of the peruſal and copy of ſuch warrant, and the ſame hath been refuſed or neglected for ſix days after ſuch demand; and if after compliance therewith, any ſuch action ſhall be brought, without making the juſtice who ſigned ſuch warrant defendant,

on producing and proving ſuch warrant at the trial, the jury ſhall give their verdict for the defendant, notwithſtanding any defect of juriſdiction in the juſtice. And if ſuch action be brought jointly againſt the juſtice and ſuch conſtable, headborough, or other officer, or perſon acting in his aid as aforeſaid; then, on proof of ſuch warrant, the jury ſhall find for the defendant. And if the verdict ſhall be given againſt the juſtice, the plaintiff ſhall recover his coſts againſt him, to be taxed in ſuch manner by the proper officer, as to include ſuch coſts as the plaintiff is liable to pay to ſuch defendant for whom ſuch verdict ſhall be found as aforeſaid.

E. 13 *G.* 3. *Jackſon*'s caſe. An action of treſpaſs was brought by the plaintiff, againſt the overſeers of the poor for taking his gelding. They alledged, that by virtue of their office, and in purſuance of a juſtice's order, they levied ſatisfaction for a poor rate, which was the treſpaſs complained of. It was objected on the trial, that by the ſtatute of 24 *G.* 2. *c.* 44. demand ſhould have been made of the peruſal and copy of the juſtice's warrant, and ſix days neglect or refuſal. And the judge who tried the cauſe being of the ſame opinion, the plaintiff was nonſuited. It was moved for a rule to ſhew cauſe why the nonſuit ſhould not be ſet aſide. Againſt the rule it was argued, that this act of 24 *G.* 2. was a remedial act, and to be conſtrued ſo as to ſuppreſs the miſchief, and advance the remedy. That the miſchief was, that juſtices of the peace were often inſnared by ſurprize on ſome little inadvertency into which they had fallen; that the remedy was, giving them a power to rectify that inaccuracy or miſtake; ſo as neither the perſon affected by it might ſuffer, nor the juſtice be vexatiouſly haraſſed. That in order to this, notice is required by the ſtatute, to give the party a power of tendering amends, bringing money into court, or pleading as he ſhall be adviſed. That *conſtables* and *headboroughs* are likewiſe by the ſaid act of 24 *G.* 2. not to be proceeded againſt, without demand and peruſal of the warrant. That *churchwardens* and *overſeers of the poor* are within the ſame reaſon, and therefore within the remedy. That, after conſtables and headboroughs, are added, *other officers*. By lord *Mansfield* and the court: They are clearly within the act of 24 *G.* 2. The juſtices warrant is the authority under which they act. To extend the benefit of the ſtatute of 21 *J.* was the intent of the ſtatute of 24 *G.* 2. and all officers acting under a juſtice's warrant are included in it. *Lofft.* 249.

SOME

SOME account of the act of 22 *G.* 3. *c.* 83. for the maintenance of the poor by incorporated ſocieties.

Reſtrictions of the ſaid act.

1. Generally, nothing in this act ſhall extend to any pariſh, townſhip, or place which ſhall not agree to adopt the proviſions herein contained.

Writing for the purpoſes of this act.

2. In order to which agreement, whenever two parts in three in number and value of the owners or occupiers, according to their poor rate, within any pariſh, townſhip, or place, ſhall at a public meeting ſignify their approbation of the proviſions herein contained, and ſhall at ſuch meeting nominate to the juſtices three perſons qualified for guardians, and three others for governors of the poor houſe, and fix ſalaries to be paid to them, and ſhall procure the conſent of two juſtices within that diviſion to ſuch agreement and ſalaries; they ſhall from that time be intitled to the benefits of this act. *ſ.* 3.

In like manner, two or more pariſhes, townſhips, or places may unite for the purpoſes aforeſaid.—Provided, that no pariſh, townſhip, or place, diſtant more than ten miles from ſuch poor houſe, ſhall be permitted to unite with the pariſhes or places which ſhall eſtabliſh ſuch poor houſe. *ſ.* 4, 5.

Meetings to be held.

3. Which notice for ſuch meetings, and for every other public meeting under this act, ſhall be given in the church three *Sundays* before; and none ſhall vote at ſuch meeting, unleſs he be owner or occupier of lands aſſeſſed to the poor rate after the rate of 51 *per annum* at the leaſt; nor ſhall any perſon vote as occupier unleſs he ſhall be aſſeſſed to ſuch poor rate. *ſ.* 6.

Power of the guardians.

4. And where guardians are appointed, neither churchwarden nor overſeer ſhall intermeddle in the care and management of the poor; but the guardian ſhall be inveſted with all powers given by any act of parliament to the overſeers of the poor, and in all reſpects except in regard to making and collecting the rates ſhall be an overſeer, but the churchwardens and overſeers ſhall continue to be liable to collect the poor rate, and ſhall pay the ſame to the guardian; or if two pariſhes or places be united, they ſhall pay over their quotas reſpectively to the treaſurer of ſuch united diſtrict. *ſ.* 7, 8.

And all notices or applications directed by any act of parliament to be given or made to the overſeers, ſhall be given and made to the guardians; but if any orders of removal or notices ſhall happen to be given to the churchwarden or overſeer, the ſame ſhall be valid, and the churchwarden

warden or overſeer ſhall deliver the ſame to the guardian. *ſ.* 7.

Provided, that nothing herein ſhall extend to alter or affect the ſettlement of any perſon; or to give to any illegitimate child born in a poor houſe or work houſe eſtabliſhed under the authority of this act, a ſettlement in the pariſh or place where ſuch houſe ſhall be (but ſuch child ſhall be conſidered as ſettled in the pariſh or place to which the mother belongs); or to alter the regulations eſtabliſhed by any act of parliament for any particular houſe of induſtry in any part of this kingdom. *ſ.* 39.

Viſitor appointed.

5. In like manner a viſitor ſhall be appointed; who may appoint a deputy. The ſaid viſitor or deputy to ſuperintend every ſuch houſe, to ſettle all doubts concerning the perſons who are to be ſent thither, to inforce the rules and regulations for the better accommodation and relief of the poor, and to ſettle accounts between guardians and treaſurer. And for an inducement for undertaking the office, the viſitor or deputy ſhall be freed from the office of conſtable, and all parochial offices, and from ſerving upon juries, whilſt he continues in ſuch office. *ſ.* 10, 11.

Treaſurer.

6. And the guardians ſhall recommend to the juſtices a treaſurer, who ſhall appoint him accordingly; which treaſurer ſhall account before the guardians at every meeting, and ſhall once a year make out an account of the expences attending the poor houſe, and of the number of poor perſons, diſtinguiſhing their age and ſex, and how they have been employed, and how much money hath been earned by the labour of the poor in the year preceding, to be laid before the viſitor, and if by him approved, ſhall be tranſmitted to the clerk of the peace, and by him laid before the ſeſſions: and ſuch treaſurer ſhall be allowed an annual ſalary not exceeding 10*l* as the viſitor ſhall appoint. *ſ.* 12.

Governor.

7. The juſtices ſhall alſo appoint a governor of each poor houſe; who may, upon proof of miſbehaviour or incapacity, be removed by the viſitor or guardians. *ſ.* 9.

Officers how long to continue.

8. The offices of guardian, governor, viſitor, and treaſurer, ſhall determine in *Eaſter* week yearly, on the day on which the public meeting for the purpoſes of this act ſhall be held. *ſ.* 14.

In the intermediate time, if any vacancy ſhall happen in any of the ſaid offices, by death, reſignation, or removal; meetings ſhall be called as ſoon as conveniently may be, and the vacancies filled up in the manner before mentioned. *ſ.* 13.

Houſes to be provided.

9. The guardians ſhall provide houſes, with proper buildings and accommodations, either by erecting new ones

ones on land to be purchaſed or rented by them, altering old ones, or hiring buildings for the purpoſe; and fit them up with the advice of the viſitor, at the proportionable expence of the ſeveral places reſpectively. *ſ.* 17.

Provided, that the poor houſe ſhall be ſituate within the reſpective pariſh or townſhip, or if ſeveral be united, then within one of the pariſhes or townſhips ſo united; and not elſewhere, without the conſent of three parts in four in number and value as aforeſaid. *ſ.* 18.

And the guardians, with the approbation of the perſons qualified as aforeſaid, may ſell any houſe erected or purchaſed for the poor of ſuch place, and alſo by order of a juſtice, may remove the perſon or perſons who ſhall inhabit the ſame or any other houſe provided at the expence of ſuch pariſh or place, if they ſhall refuſe to quit after 14 days notice. *ſ.* 43.

The houſes to be hired ſhall be taken for not more than 21 years nor leſs than three; and ſhall be free from all parochial and parliamentary taxes, except ſuch as they were liable to at the time of taking thereof. *ſ.* 19.

Purchaſing lands.

10. The viſitors and guardians ſhall be a body corporate, and enabled to take by purchaſe or leaſe any lands not exceeding in any city or town one acre, and in the open country twenty acres, for the ſite of a houſe and for lands to be occupied for the purpoſes of this act. *ſ.* 21.

Perſons incapacitated, as infants, femes covert, and the like, ſhall have power to ſell or leaſe, not exceeding the quantities aforeſaid. *ſ.* 22, 23.

Incloſing commons.

11. The guardians may incloſe from any waſte or common, with conſent of the lord of the manor, and the major part in value of the perſons having right of common thereon, any quantity not exceeding ten acres, for building upon or improving the ſame for the benefit of ſuch poor houſe. *ſ.* 27.

Borrowing money.

12. The viſitor and guardian, where the expences or their proportion thereof reſpectively ſhall amount to 100*l* or upwards, may borrow the ſame at intereſt, and ſecure the ſame by a charge upon the poor rate, in ſums not exceeding 50*l* each for the greater eaſe in diſcharging the ſame. And the guardians and their ſucceſſors ſhall keep down the intereſt; and when the principal ſhall be called for, they may borrow it from ſome other perſon by aſſignment of the ſecurity. *ſ.* 20.

Admitting paupers.

13. Every perſon ſent to the poor houſe ſhall deliver to the governor an order for his admiſſion ſigned by one of the guardians. *ſ.* 28.

But no perſon ſhall be ſent to ſuch poor houſe, except ſuch as are become indigent by old age, ſickneſs, or infirmities,

firmities, and are unable to acquire a maintenance by their labour, and except ſuch orphan children as ſhall be ſent thither by order of the guardian with the approbation of the viſitor, and except ſuch children as ſhall neceſſarily go with their mothers thither for ſuſtenance. *ſ.* 29.

Children.

14. All infant children of tender years, and who from accident or misfortune ſhall become chargeable to the pariſh or place where they belong, may be either ſent to ſuch poor houſe, or be placed by the guardian with the approbation of the viſitor with ſome reputable perſon at ſuch weekly allowance as ſhall be agreed upon, until ſuch child ſhall be of age to go to ſervice or bound apprentice; and the viſitor ſhall ſee that they be ſo placed out, at the expence of the place to which they ſhall belong, according to the laws now in being: Provided, that if the parents or relations of ſuch poor child ſo ſent to ſuch houſe, or any other reſponſible perſon, ſhall deſire to receive and provide for ſuch poor child, the guardian may diſmiſs him from the poor houſe and deliver him to ſuch perſon: Provided alſo, that nothing herein ſhall give any power to ſeparate any child under the age of ſeven years from his parent or parents without their conſent. *ſ.* 30.

Perſons able to work, but not willing.

15. All idle or diſorderly perſons, who are able, but not willing to work and maintain themſelves and families, ſhall be proſecuted by the guardians, and puniſhed as idle and diſorderly perſons are directed to be by the vagrant act of 17 *G.* 2. And if any guardian ſhall neglect to make complaint thereof againſt ſuch perſon to ſome neighbouring juſtice within ten days after it ſhall come to his knowledge, he ſhall forfeit a ſum not exceeding 5*l* nor leſs than 20*s* half thereof to be paid to the informer. *ſ.* 31.

Perſons not able to get employment.

16. Where there ſhall be any poor perſon able and willing to work, but who cannot get employment, the guardian may agree for the labour of ſuch poor perſon at any employment ſuited to his ſtrength and capacity, and maintain him until ſuch employment ſhall be procured, and during the time of ſuch work, and to receive the money earned and apply it in ſuch maintenance, and make up the deficiency; and if ſuch poor perſon ſhall refuſe to work, or run away from ſuch employment, the guardian ſhall complain to a juſtice, who ſhall on conviction commit the offender to the houſe of correction to be kept to hard labour not exceeding three months, nor leſs than one. *ſ.* 32.

Farming out the poor to ceaſe.

17. From the time that any pariſh, townſhip, or place ſhall have adopted the proviſions of this act, ſo much of the act 9 *G. c.* 7. as reſpects the maintaining or hiring out the labour of the poor by contract ſhall be repealed. *ſ.* 1.

Provided,

Provided, that the viſitors and guardians may make agreements with any perſon for the diet or cloathing of ſuch poor perſons who ſhall be ſent to the houſes provided by this act, and for their work and labour; ſo that ſuch agreement be made for not longer than 12 months, and ſo as the ſame be under the controul of the viſitor, guardian, and governor; with power to two juſtices to diſſolve the contract. *ſ.* 2.

Occaſional relief ordered by the juſtices.

18. On complaint upon oath to a juſtice, on behalf of any poor perſon belonging to any pariſh or place, that the guardian hath refuſed to ſuch poor perſon proper relief, the juſtice (on enquiry into the circumſtances upon oath) may order ſome weekly or other relief, or direct ſuch guardian to ſend him to the poor houſe, if he ſhall appear to be a fit object to be kept and provided for there; which order ſhall be complied with by the guardian within two days after he ſhall receive the ſame, on pain of 5 l, of which ſum ſo much ſhall be paid to ſuch poor perſon as the juſtice ſhall direct, the remainder to be applied as the other penalties by this act. *ſ.* 37.

Or if it ſhall appear that ſuch perſon is able and willing to work, but wants employment, the juſtice may order the guardian to procure him maintenance and employment in the manner herein before directed: Or if ſuch perſon ſhall appear to be an idle or diſorderly perſon, and has not uſed proper means to get employment; or that he is an idle or diſorderly perſon, able to work, but by his neglect of work, or for want of ſeeking employment, or by ſpending the money he earns in alehouſes or places of bad repute, doth not maintain his wife or children; the juſtice may commit him to the houſe of correction for any time not exceeding three months, nor leſs than one. *ſ.* 35.

Provided, that in places where a viſitor is appointed, application ſhall be firſt made to the guardian; and if he refuſes redreſs, then application ſhall be made to the viſitor; and if he refuſes, then application ſhall be made to a juſtice. *ſ.* 36.

Maintenance.

19. The poor perſons ſent to every ſuch houſe ſhall be maintained at the general expence of the pariſhes or places ſo uniting. *ſ.* 24.

And the treaſurer, with the aſſiſtance of the governor, ſhall provide all neceſſaries for maintenance of ſuch poor and keep an account thereof. *id.*

Cloathing.

20. The guardian of the poor for any pariſh or place ſhall provide, at the expence of ſuch pariſh or place, ſuitable cloathing for the perſons ſent by him to ſuch poor houſe; which if he ſhall neglect to do, the governor or one of the guardians of ſuch houſe ſhall complain to a neighbouring

neighbouring juſtice, who ſhall ſummon the perſon complained of and direct him to provide ſuch cloathing; and if he ſhall make default in providing the ſame within ten days after ſuch direction, the juſtice ſhall order the governor of ſuch poor houſe to provide the ſame, and levy the price thereof, together with coſts and charges, by diſtreſs and ſale of the goods of ſuch guardian ſo making default. *ſ.* 33.

Badge. 21. Every perſon receiving weekly relief ſhall wear the badge directed by the 8 & 9 *W.* unleſs directed otherwiſe by a juſtice on proof of very decent and orderly behaviour. *ſ.* 35.

Monthly meetings. 22. And there ſhall be a meeting of the guardians at the poor houſe, on the firſt *Monday* in every month, to ſtate and examine the accounts of the preceding month. *ſ.* 24.

At which meeting the treaſurer ſhall produce his accounts, and the money due to him ſhall be ſettled and adjuſted in proportion to the ſums paid by the reſpective pariſhes or places at a medium of three years, next before ſuch agreement in writing. And the overſeers, on pain of 5l, ſhall attend and give an account what has been the expence at a medium for three years. *ſ.* 24, 25.

And if the guardian ſhall not attend the monthly meeting, or ſend ſome perſon to attend and make payments for him (if by ſome accident he cannot attend himſelf); he ſhall forfeit not exceeding 5l, nor leſs than 40s. *ſ.* 26.

Juſtices may hold ſpecial ſeſſions. 23. The juſtices may hold ſpecial ſeſſions for the purpoſes of this act; on giving proper notices to the ſeveral juſtices, peace officers, and guardians. *ſ.* 16.

Pauper embezilling goods. 24. If any poor perſon ſent to ſuch houſe ſhall embezil or wilfully waſte any of the goods or materials, he ſhall be committed to the houſe of correction not exceeding ſix months nor leſs than two. *ſ.* 40.

Officer not to be a dealer. 25. If any viſitor, guardian, or governor ſhall ſell or furniſh any materials, goods, cloaths, victuals, or proviſions; or do any work in his trade for the uſe of any workhouſe, poor houſe, or poor perſons, within any place for which he ſhall be appointed to act; or be concerned in trade or intereſt with any perſon who ſhall ſell or furniſh the ſame; he ſhall forfeit not exceeding 20l, nor leſs than 5l. *ſ.* 42.

Occaſional poor falling ſick. 26. If any poor perſon ſhall be retarded on his paſſage thro' any pariſh or place in which he has no legal ſettlement, by reaſon of any accident, ſickneſs, or bodily infirmity, without means of ſubſiſtence, the guardian near the place where ſuch diſtreſſed object ſhall be, ſhall provide for him lodging and ſuitable nouriſhment and aſſiſtance (and alſo

alſo cloathing if neceſſary), until he can be removed with ſafety; and when he ſhall be fit to be removed, ſhall carry him to ſome neighbouring juſtices, who ſhall examine him on oath touching the place of his ſettlement, and make an order for his removal thither if they think fit. And the pariſh officer who ſhall ſo provide for ſuch poor perſon ſhall make a charge of the expences; which, on being allowed by the juſtices, ſhall be paid by the guardian of the pariſh or place where ſuch poor perſon ſhall be ſettled, if that can be diſcovered, and be within the county: Or if ſuch perſon ſhall die before he can be ſo examined, or ſhall be found dead in any pariſh or place to which he did not belong, the guardian of that place ſhall cauſe him to be buried in the pariſh or place where he ſo died or was found dead, and make a charge of the expences thereof; which, being allowed by a juſtice, ſhall be paid by the guardian of the place where ſuch perſon ſhall appear to have been ſettled, if it be within the county; but if the ſettlement cannot be diſcovered, or ſhall not be within that county, the ſame ſhall be paid by the treaſurer out of the county rate. *ſ.* 38.

Inticing poor perſons to remove without a warrant.

27. Whereas it frequently happens, that poor children, pregnant women, or perſons afflicted with ſickneſs or ſome bodily infirmity, are inticed or conveyed by pariſh officers or other perſons, from one pariſh or place to another, without any legal order of removal, in order to eaſe the one pariſh or place, and to burden the other with ſuch poor perſons; if any guardian or other perſon ſhall ſo intice, convey, or remove, or cauſe or procure to be ſo inticed, conveyed, or removed, any ſuch poor perſon from one pariſh or place to another which ſhall adopt the proviſions of this act, without an order of removal from two juſtices, he ſhall forfeit not exceeding 20 l, nor leſs than 5 l. *ſ.* 41.

Penalties.

28. All penalties inflicted by this act ſhall be recovered before one juſtice of the juriſdiction where the offender dwells, by diſtreſs: for want of ſufficient diſtreſs, the offender to be committed to the houſe of correction not exceeding ſix months, nor leſs than one. Which ſaid penalties, not herein otherwiſe directed, ſhall be paid to the treaſurer towards defraying the expences of the houſe. *ſ.* 45.

Appeal.

29. Perſons aggrieved may appeal to the next ſeſſions, giving eight days notice, and giving ſecurity by recognizance to pay the coſts if the matter ſhall be determined againſt the appellant. *ſ.* 46.

30. Finally,

Special rules and forms.

30. Finally, There are rules, orders, and regulations ſpecified in the act to be obſerved at every ſuch poor houſe, with ſuch additions as ſhall be made by the juſtices at a ſpecial ſeſſions; provided, that ſuch additions be not contradictory to theſe ſame rules and orders, and that the ſame be not repealed at the quarter ſeſſions: And the governors ſhall cauſe the ſame rules to be printed in plain legible characters, and fixed up in ſome conſpicuous part of ſuch houſe. *ſ.* 34.

There are alſo in the act ſpecial precedents or forms of proceeding in ſome of the moſt material inſtances; which rules and forms being ſomewhat long, and not capable of being abridged, it is thought proper for theſe and other minute particulars to refer to the act itſelf.

MVSEVM BRITANNICVM

Here endeth the THIRD VOLUME.